

1 You can bring her in and ask her just to remain
2 standing when she gets to the witness stand.

3 COURT ATTENDANT: Okay.

4 (Sidebar conference was held.)

5 THE COURT: Hi.

6 THE WITNESS: Hi.

7 THE COURT: Could you raise your right hand, please,
8 and face the clerk?

9 THE CLERK: Do you solemnly swear that the testimony
10 you are about to give in the cause now pending before this
11 Court will be the truth, the whole truth, and nothing but
12 the truth?

13 THE WITNESS: I do.

14 THE CLERK: Have a seat, please.

15 If you could state your name and spell it for the
16 record.

17 THE WITNESS: It's Lisa Paglia, L-i-s-a, P, as in
18 Paul, a-g-l-i-a.

19 THE CLERK: Thank you.

20 THE COURT: All right. Ms. Clement

21 TESTIMONY OF

22 LISA PAGLIA, Witness called under Evidence Code 776 on
23 behalf of the Plaintiffs,

24 CROSS-EXAMINATION

25 By LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
26 the Plaintiffs:

27 Q Hi. Paglia?

28 A Yes.

1 Q Thank you. I know I keep saying Paglia, so I
2 apologize for that.

3 Ms. Paglia, could you tell us how you became, um,
4 affiliated with Emeritus Corporation in 2008?

5 A Um, I was looking for a job and I had actually worked
6 for Emeritus back in 1996 in upstate New York, so I, um, was
7 considering going back into the assisted living industry and
8 I went on their Web site and looked at their job openings.

9 Q And did you work at Emeritus in 2008, from April
10 through November of that year?

11 A I did.

12 Q And, um, tell us about how you got the -- your job
13 there and what the job was, if you can tell the jurors?

14 A Um, there was a position open for a, um, community
15 relations director at the Fremont facility, um, and I was
16 invited to -- to go to a job interview there. It was a
17 group interview with the executive director and a couple of
18 the others, like the business office director and the nurse.
19 And several of us were interviewed, and the executive
20 director, um, told me, she says, I'm not going to offer you
21 the position, I feel you are way over-qualified for this
22 job, I'm going to offer it to somebody else. And I said,
23 Okay.

24 And, um, she actually passed my resume on to -- it was
25 either corporate or the regional director of operations in
26 that region at the time, and I got a phone call, um, asking
27 me to come in for an interview for the regional director of
28 sales and marketing position that was open in that region at

1 the time.

2 Q And what region was that?

3 A Region two.

4 Q And can you tell us geographically where that region
5 is?

6 A It was predominantly the East Bay, but I did have one
7 building all the way down in Paso Robles. I also had one in
8 Salinas, and then the rest of them -- there was one in
9 Danville, one in Fremont, San Pablo. Um, there were seven
10 buildings all together.

11 Q And then, um, did you then have an interview with the
12 regional director of operations for region two?

13 A I did. I was interviewed at the Daville, um,
14 building, um, by the regional director of operations and the
15 regional director of, um, nursing.

16 Q And then after that did you have another level of
17 interviews?

18 A Yes. From that point I had a telephone interview with
19 the vice president of sales and marketing, Angela Neale, and
20 then, um, I had, um, a final interview with the senior vice
21 president of sales and marketing for the company, his name's
22 John Cincotta.

23 Q And did you know John Cincotta?

24 A I did, from when I worked at Emeritus, um, in 1996 in
25 upstate New York.

26 Q So had it been, um, about, what, twelve years since
27 you had worked for the company, ten, twelve years?

28 A Correct.

1 Q Okay. And now were you eventually hired?

2 A I was hired.

3 Q And in connection with leaving your employment, were
4 you required to sign a confidentiality agreement?

5 A Yes.

6 Q And have you been able to locate a copy of that
7 agreement?

8 A No.

9 Q Was it your recollection that, um, this agreement
10 prevented you from talking about things you saw or learned
11 about Emeritus?

12 MR. REID: It's leading, it's hearsay, lacks
13 foundation.

14 THE COURT: Sustained on the leading.

15 MS. CLEMENT: I'm calling this witness under 776, your
16 Honor.

17 THE COURT: I'm sorry, I didn't know you were doing
18 that.

19 MS. CLEMENT: I apologize. I stated that when I first
20 started.

21 THE COURT: I'm not sure that I have reason to believe
22 that is the case at this point. Let's start out generally
23 speaking, please.

24 MS. CLEMENT: Okay.

25 Q (By MS. CLEMENT) Were you subpoenaed to come here and
26 testify today?

27 A Yes, I was.

28 Q And did you have any concerns?

1 A Yes.

2 Q And what were your concerns?

3 A Um, speaking about, um, things that I have knowledge
4 about the company and things during my employment, um, that
5 I was concerned about, um, violating the confidentiality
6 agreement that I signed.

7 Q And did you understand that this subpoena that brought
8 you here today was a Court order?

9 A Yes.

10 Q And that that was an order requiring you to testify?

11 A Yes.

12 Q And that's why you're here today?

13 A Yes, that's why I'm here.

14 Q Can you tell me that, um, after you were, um, hired --
15 excuse me.

16 After your communication with John Cincotta, the
17 senior vice president, were you then hired?

18 A I was offered the position by Angela Neale.

19 Q And who is Angela Neale?

20 A Angela Neale was the vice president of sales and
21 marketing for the California division, which included
22 regions one, two, three and four.

23 Q And were all of those regions in the -- was that known
24 as the California or west, um, division of Emeritus?

25 A Yes.

26 Q And did you have any preparation from, um, by Emeritus
27 prior to starting your job?

28 A Um, I was invited to a divisional, um, sales and

1 marketing, um, meeting in Seattle at the corporate
2 headquarters in March. I wasn't officially employed but I
3 went.

4 Q And what was the -- to your understanding what was the
5 purpose of the, um, meeting that you attended in Seattle?

6 A Oh, it was, um, to get the regional directors of sales
7 and marketing, and, um, there were some other folks there,
8 to talk about, um, sales and marketing, um, campaigns and,
9 um, kind of the vision of the company moving forward and get
10 to know other employees.

11 Q Now, was that meeting in Seattle, was that strictly
12 about sales and marketing?

13 A Um, I don't know if it was strictly, but the focus was
14 about sales and marketing.

15 Q Okay. And were there, um, divisions other than
16 California represented at the meeting that you attended in,
17 um, 2008?

18 A Oh, yes.

19 Q And was it all over the country?

20 A Yes.

21 Q Okay. And so, um, when was that, um, Seattle meeting?

22 A It was in March of 2008.

23 Q Okay. And, um, what did you learn about the
24 California division while you were in that March of 2008
25 meeting?

26 MR. REID: It's overbroad, your Honor.

27 THE COURT: It is; sustained.

28 Q (By MS. CLEMENT) Can you tell the jurors what

1 specifically you learned that Emeritus' position was with
2 regard to the condition of the California division?

3 MR. REID: That's vague and overbroad.

4 THE COURT: Sustained on the vagueness.

5 Q (By MS. CLEMENT) Did you learn from Emeritus during
6 your meeting in March of 2008 -- well, let me ask you this:
7 Who presented at the meeting?

8 A A lot of different people presented.

9 Q Okay. Were there people from corporate sales and
10 marketing presenting?

11 A Yes.

12 Q Were the -- were there any officers or directors
13 attending the meeting?

14 A Yes.

15 Q Who attended?

16 A Oh, Mr. Baty attended. Mr. Cobb attended.
17 Ms. Sallerson, Mr. Cincotta, um, Angela Neale. There were
18 other vice presidents there, I don't recall their names.

19 Q But at the --

20 A Um --

21 Q -- very top of the company?

22 A Justin Hutchens was there. He was -- he spoke to us.
23 There was a -- a pretty broad representation from everybody
24 in the -- in the company. I think the, um, the chief
25 finance officer came in and spoke to us. I think we pretty
26 much met, um, most of the officers there.

27 Q Okay. And during that, um -- those presentations, did
28 you get a picture as to what corporate headquarter's view

1 was of the standing of the California division as it ranked
2 against other divisions in the country?

3 A Oh, there -- there was discussions that, um,
4 California was considered, um, a challenged region, a
5 troubled region. Um, that was very apparent, yes.

6 Q And what was the trouble with the California division
7 that was related to you by corporate during the March 2008
8 meeting that you attended?

9 A If I'm hearing your question correctly, um, it was
10 that the region was behind what's called census, which means
11 how many people, residents live in a building, um, compared
12 to the other regions and divisions in the country.

13 Q Was there -- census, is another way to say that
14 occupancy?

15 A Yes.

16 Q Was there any concern raised in the meeting with
17 regard to, um, whether or not the California division was
18 meeting its financial targets?

19 A Um, the two are kind of synonymous because you can't
20 meet financial targets without meeting your occupancy goals.
21 Occupancy drives the business. So, um, that was a -- the
22 challenge was they were financially struggling because their
23 occupancy slash census was, um, was below the -- the
24 budgeted -- where it was supposed to be based on the budget.

25 Q Were there any regions in California in particular
26 that were isolated by corporate as being particularly
27 troubled?

28 A Of the four regions that we represented, um, region

1 one was pretty much on life support.

2 Q What do you mean when you say it was on life support?

3 A They were -- they were critically, um, below their
4 budgeted census of where they were supposed to be.

5 Q What's the term that Emeritus uses, or at least in
6 2008 did, used for, um, describing, um, the residents?

7 MR. REID: That's vague, your Honor.

8 THE COURT: She can answer, if she can.

9 THE WITNESS: For describing the residents?

10 Q (By MS. CLEMENT) Was there something that was in the
11 sales and marketing field that was a term used to describe
12 when you got a sale, what that -- what the, um -- was there
13 a particular word used?

14 MR. REID: It's leading, your Honor.

15 THE WITNESS: Um --

16 THE COURT: Overruled.

17 MS. CLEMENT: Well, let me rephrase.

18 THE COURT: You can answer.

19 MS. CLEMENT: Let me rephrase the question.

20 Q (By MS. CLEMENT) Have you heard of the term "units"?

21 A I've heard the term, yes.

22 Q Did you hear that at, um, Emeritus, "revenue per
23 unit"?

24 A Yes.

25 Q And what does that mean?

26 A Um --

27 MR. REID: May lack foundation, your Honor, calls for
28 speculation, it's also 352.

1 THE COURT: Let's get some foundation, please.

2 Q (By MS. CLEMENT) How do you know what "revenue per
3 unit" means?

4 A Well, um, the acronym that was used was actually RPU,
5 which also means revenue per unit, and, um, it's how many,
6 um -- let's see, how can I say this --

7 MR. REID: I'm not sure she is answering the question
8 that was asked.

9 THE COURT: She is thinking for a moment.

10 THE WITNESS: I'm trying to, um, figure out how to
11 explain it so -- so people will understand.

12 Um, a revenue per unit represents how many dollars per
13 resident is represented in each building, if that makes
14 sense.

15 THE COURT: The question was, How do you know what
16 that revenue per unit --

17 THE WITNESS: Oh, how do I know? I'm sorry.

18 It was discussed all of the time in, um, kind of my
19 world as a regional director. We discussed it very
20 frequently on, um, weekly business calls and, um, it was a
21 widely used term.

22 Q (By MS. CLEMENT) When you left the Seattle meeting
23 did you shortly thereafter start working full-time as a
24 regional director of, um, sales and marketing?

25 A Yes.

26 Q And from your meeting in Seattle did you learn of a
27 plan that Emeritus had to increase occupancy?

28 A Um, well, there was a campaign that they were rolling

1 out called "No barriers to sales".

2 Q Well, what does that mean, "No barriers to sales"
3 campaign?

4 A It was their plan to try to fill up the buildings and
5 reach the, um, the budget for how many residents should --
6 were -- should be residing in the buildings.

7 Q And what type of barriers were you and the other
8 regional team members supposed to be overcoming?

9 A Oh, there's many barriers. There's financial
10 barriers. There are medical barriers. There -- there are
11 competitive barriers. Um, I mean, there's just a myriad of
12 different barriers that would, um, you know, thwart a sale,
13 somebody from moving in. Either they can't afford it or
14 there was a medical reason or, um, there was a -- they were
15 looking at the competitors in the area and considering
16 another company, another facility. So anything that, um --
17 a barrier was considered any reason why, um, somebody would
18 not choose to move in to an Emeritus building.

19 Q What was your take-away from the Seattle meeting, um,
20 about Emeritus Corporate priorities?

21 MR. REID: That is vague, your Honor, calls for
22 speculation.

23 THE COURT: She can answer it.

24 THE WITNESS: I'm sorry, could you repeat the
25 question?

26 MS. CLEMENT: Yes.

27 Q (By MS. CLEMENT) What was your take-away after
28 attending the meeting in Seattle regarding -- that was

1 primarily regarding sales and marketing in March of 2008?

2 A That there was a huge focus on needing to fill up, um,
3 the buildings, you know, country-wide but specifically in,
4 um, the California division where I was, um, going to be
5 managing a territory.

6 Q Now, after you started full-time did you get
7 communication from your superiors about this, um, this
8 focus -- this huge focus to fill the buildings?

9 A Yes. On a regular basis.

10 Q And how would these communications come to you?

11 A Well, in various formats. There were a lot of
12 e-mails, but, um we did have a weekly, um, business meeting.
13 Um, each region, um, in our division, um, had their own
14 weekly business call and it was with the, um, the regional,
15 um, team and the -- the, um, the vice president team. We
16 were assigned -- it was every Friday. Each region had their
17 call at a different time. And it was, um, it was a huge
18 focus of discussion on these weekly business calls.

19 Q Okay. And, um, can you please put up Exhibit 265,
20 Erik?

21 Can you get the lights?

22 We need to make that a lot bigger, Erik? Make it
23 bigger. Thank you.

24 Um, would you have been copied as a regional director
25 of sales and marketing on this e-mail from Catherine Ratelle
26 about "sales comes first"?

27 A July 14th, 2008. Yes, I would have received that.

28 Q Was this typical of the type of e-mails, commun -- and

1 verbal communications that you had in the course of your
2 employment about making sales the highest priority?

3 MR. REID: That's vague, your Honor.

4 THE COURT: Overruled.

5 You can answer it.

6 THE WITNESS: Um, was it typical? Um, yeah, that was
7 typical.

8 MS. CLEMENT: Okay. And can we go to the second half
9 of the e-mail, please?

10 Q (By MS. CLEMENT) Would -- as part of your job did you
11 go into the individual facilities?

12 A I did.

13 Q And would you meet with the executive directors in
14 each building?

15 A Um, the first thing that we were supposed to do as
16 regionals when we went into the building --

17 MR. REID: It's non-responsive, your Honor.

18 THE COURT: Sustained.

19 Q (By MS. CLEMENT) Can you tell us when you would go
20 into a building what were you -- what your normal practice
21 would be as to who you would meet with?

22 A Yes. Initially we met with the executive director,
23 um, to find out how things were going, any concerns, any
24 problems that, um, the executive director wanted to share.
25 We were supposed to tell them what the purpose of our visit
26 was for that particular day, what we planned on
27 accomplishing. And then, um, we -- we would do the same,
28 um, before leaving the building. We would check out with

1 the executive director and, um, just kind of chat about what
2 we accomplished during the day and maybe some things that --
3 that, um, I saw or -- or one of my other, um, collaborative
4 team members saw. So we were, um, kind of the eyes and ears
5 of the building.

6 And, um, then we talked about, um, the regional team
7 had -- had their -- we had our own, um, telephone conference
8 prior to the weekly --

9 MR. REID: This is becoming non-responsive.

10 MS. CLEMENT: Yeah. I will follow-up with that.
11 Thank you.

12 THE COURT: Go ahead.

13 Q (By MS. CLEMENT) Um, on this e-mail from Catherine
14 Ratelle -- who is Catherine Ratelle in relation to you?

15 A Catherine Ratelle was the vice president of operations
16 for the California division.

17 Q Okay.

18 A So --

19 Q Go ahead.

20 A -- I believe there was a dotted line from my position
21 to her position.

22 Q Okay. And, um, to your understanding at the time you
23 worked there was it Catherine Ratelle, um, was the vice
24 president of operations, Lisa Hulse was the regional
25 director or -- excuse me -- vice president of quality
26 services, and Angela Neale was the, um, vice president of
27 sales and marketing?

28 A Yes, that's correct.

1 Q Okay. And that was the -- the California
2 collaborative team; true?

3 A Yes.

4 Q Okay. And then who was on your collaborative team?

5 A It was myself, and when I first started we didn't have
6 a regional director of operations, and Eloisa was the
7 regional director of nursing.

8 Q And then how -- how long -- did you interview with
9 someone who was the regional director of operations for your
10 region?

11 A Yes.

12 MR. REID: Your Honor, I'm going to object that it's
13 irrelevant, 352. It's -- it's not the region that is
14 involved in this case.

15 THE COURT: Overruled.

16 Q (By MS. CLEMENT) And after you interviewed and went
17 to Seattle and came back, was that regional director of
18 operations still there?

19 A No.

20 Q And how long did you go before you had a RDO?

21 MR. REID: It's 352.

22 THE COURT: Mr. Reid, I'm working off the discussions
23 we had at sidebar and the offer of proof from Ms. Clement.
24 Your objection is overruled.

25 THE WITNESS: I believe it was a couple of months.

26 Q (By MS. CLEMENT) And who became your RDO then?

27 A A woman by the name of Ronda Castleberg.

28 Q Okay. And so it was you -- so Ronda Castleberg was at

1 the top of this collaborative team management, you were
2 sales and marketing, and then was it Eloise --

3 A Eloisa.

4 Q -- was the regional nurse. Okay.

5 And when you would go into the buildings, um, and
6 speak with the EDs, did you ever hear any concern about --
7 from the EDs, any feedback from them about, um, these type
8 of communications where they are being held responsible for
9 census and occupancy growth and they were to make their
10 commitment to sales number one on their list of priorities?

11 MR. REID: It's compound, it's overbroad, and it's
12 352.

13 THE COURT: Sustained on compound.

14 MS. CLEMENT: If you can hit the lights.

15 Q (By MS. CLEMENT) Did you have -- did you hear from
16 the executive directors concerns about these type of
17 communications where sales had to come first?

18 A Um, yes. Yes. I heard complaints about various
19 things and that was one of them.

20 Q Did you hear concerns from the executive directors in
21 your region that they felt pressure to fill the buildings?

22 A Oh, without a doubt they felt pressure, yes.

23 Q What other concerns did you hear from the executive
24 directors when you would be in your meetings with them on
25 visits to the facilities?

26 MR. REID: That is overbroad and may be 352.

27 THE COURT: Sustained on overbroad.

28 Q (By MS. CLEMENT) Did you hear concerns from the

1 executive directors on issues related to resident care
2 needs?

3 MR. REID: That's leading.

4 THE COURT: She can answer.

5 THE WITNESS: Yes, I did.

6 Q (By MS. CLEMENT) And what were those concerns, if you
7 could tell the jurors?

8 A Well, probably the biggest one was there was, um --
9 seemed to be, um, just an understaffing, um, problem just
10 throughout the company. So, um, that was something that
11 was, um, widely expressed in every building I went into.

12 Q Did you share this concern that the EDs raised with
13 you with your collaborative team?

14 A Yes.

15 Q And did you share that concern with Ronda Castleberg?

16 A Yes.

17 Q And what would her response be to you raising the
18 concern of understaffing?

19 A Well, depending on the day of the week I got various
20 responses. Um, sometimes she, um, would be receptive to
21 hearing the feedback and other times she would tell me to
22 keep my business out of operations and focus on sales and
23 marketing.

24 Q Did you have -- did you hear from any of the, um,
25 directors, either executive directors or sales and marketing
26 directors in region two, that they had concerns about
27 voicing, um, or giving feedback about their concerns to
28 regional team members?

1 A Could you --

2 Q That was a terrible question. Sorry.

3 A You lost me on that one.

4 Q Oh, well, I lost everybody. Sorry about that.

5 Did you ever hear from either the EDs, the executive
6 directors, or the sales and marketing directors in region
7 two that they had concerns about their interactions with any
8 members of the regional team?

9 A Oh, yes.

10 Q And was there anyone in particular on the regional
11 team that your, um, EDs and sales and marketing people that
12 reported to you, um, told you they had concerns about?

13 A Yes.

14 Q And who?

15 A Um, it was Ronda Castleberg.

16 Q And what were the concerns that were raised by the EDs
17 and sales and marketing people about Ronda Castleberg?

18 A Um, that she was abusive to staff. She would come in
19 and just terrorize the buildings. She would yell and scream
20 at people at the top of her lungs and, um, they -- not so
21 much the sales and marketing people but the executive
22 directors. I had many executive directors tell me they
23 didn't want her in the building because she was so abusive
24 and out of control when she was there, just wrecked havoc on
25 every building she went into.

26 Q How was it for you working with, um, Ronda Castleberg
27 as part of your collaborative team management?

28 A She was -- I personally witnessed her out of control.

1 She would, um, blow up and start screaming and yelling and
2 she would accuse people of things. Um, she would be nice
3 and calm one minute and the slightest thing would set her
4 off and she would just go bizerk. So I personally, um, was
5 on the, um, receiving edge of that a couple of times.

6 Q Did it feel like it was collaborative running --

7 A No --

8 Q -- region two?

9 A -- not at all.

10 Q On these regularly scheduled conference calls that you
11 had, um, you would have regional calls and then you would
12 have division calls; is that true? Is that what you said?

13 A We had regional calls amongst the collaborative
14 management team and these would precede the, um, the
15 divisional calls which was with our, um, collaborative vice
16 president team.

17 And the purpose for that --

18 MR. REID: That is narrative, your Honor.

19 THE COURT: Sustained.

20 Q (By MS. CLEMENT) What was the purpose of having two
21 separate calls?

22 A Um, because we were told we were not supposed to come
23 to the divisional calls with the problems that we had
24 been -- um, that had been brought to our attention, that we
25 were to -- between the collaborative management team on the
26 regional level, we were supposed to, um, decide as a group
27 what the solutions to the problems were and bring the
28 solutions to the telephone to the weekly business call.

1 Q And who told you that?

2 A Um, the -- Angela Neale, Lisa Hulse, and, um,
3 Catherine Ratelle.

4 Q So how would you gather your information for the
5 regional call that you would have each week?

6 A By visiting the buildings.

7 Q Okay. So you actually physically would go into the
8 buildings, talk to the, um, employees there, directors.
9 Would you talk to line staff, anybody else?

10 A Yes.

11 Q Okay. And you would gather that information and then
12 you would come back to your regional call and you would have
13 a phone call amongst the three of you?

14 A Yes.

15 Q And then how soon after that phone call would you go
16 and then have the divisional phone call?

17 A It -- it actually varied. The, um, the divisional
18 phone call was standard, it was every Friday. We tried to
19 get the, um, the regional call in whenever we could. We
20 were all very busy. We were -- the three of us were off in
21 different directions, and, um, so, you know, if I was in a
22 building then maybe Eloisa was in another building and you
23 know, etcetera, etcetera. So we would come back and
24 convene. It was -- we tried to do it the morning of the
25 business call but sometimes it didn't always work out that
26 way. So we would try to do it as close to the weekly
27 business call as we could.

28 Q And the weekly business call, that would be with the

1 vice presidents?

2 A Yes.

3 Q Okay. And what were your responsibilities on the, um,
4 weekly business calls with the vice presidents?

5 A My responsibility was to report the sales projections
6 for the week and the month on a cumulative basis and, um,
7 also to report the, um, move-ins and the move-outs and, um,
8 gathering the information from -- from the seven, um, sales
9 people that I had in my region.

10 Q What type of information were you required to report
11 in addition to projections with regard to new potential
12 move-ins?

13 A I'm sorry, could you repeat the question?

14 Q Yeah. What type of information were you to report on
15 the VP calls as -- with regard to potential move-ins?

16 A Oh. Um, how many people were considered definite
17 move-ins and how many were -- they basically coded the --
18 the -- what they call prospects into, um, hot, warm and cold
19 leads or prospects. So that was part of my reporting
20 responsibility was to, um, report how many hot prospects,
21 warm prospects, cold prospects, definite move-ins,
22 move-outs, um, on a weekly and, of course, monthly basis.

23 Q And what was a hot prospect or lead?

24 A Somebody that the, um, community relations director
25 felt was, um, um, going to move in within 30 days of the
26 date that it was being reported.

27 Q And was there any requirement to report whether there
28 was money in hand for the move-ins?

1 A Yes. We -- we reported whether or not how many
2 deposits we had on hand week to week.

3 Q And how many facilities did you have responsibility
4 for, and can you tell us what type of facilities they were?

5 A I had seven in my region which was actually a
6 relatively small region. I had two stand-alone memory care,
7 um, buildings, and then, um, couple of buildings that had
8 both assisted living and memory care, and at least one of
9 them was just assisted living.

10 Q Okay. And would you have to report things like from
11 the prior week if anything had changed from the one week to
12 the next in terms of a hot lead or -- or a prospective
13 move-in?

14 A Oh, yes. Yes.

15 Q Can you tell the jurors what that was about?

16 A Um, we were expected -- I should say I was expected to
17 be pretty accurate in reporting the projected numbers for
18 move-ins, um, which is a difficult thing to do because it
19 hasn't happened yet. Um, so as best I could, um, I was
20 gathering the information from my sales people and basing my
21 projections on what they were telling me as far as how solid
22 they felt the person was would be moving in. Um, there were
23 several times where move-ins didn't happen or move-outs
24 happened unexpectedly.

25 MR. REID: This is becoming a narrative, your Honor.
26 It's beyond the scope of the question now.

27 THE COURT: I think she is explaining the report and
28 what she had to do. I will let her finish up a little more

1 and then let's move on.

2 THE WITNESS: Okay. Um, so --

3 Q (By MS. CLEMENT) You were saying --

4 A Yeah.

5 Q -- there were several times where move-ins didn't
6 happen that were expected or move-outs happened unexpectedly
7 and --

8 A Oh, I'm sorry. Get back on track.

9 So, um, the numbers would not be -- would be off from
10 what I had reported maybe the prior week and, um, that
11 actually was a very big deal to the vice president, to the
12 the -- the vice president, um, team.

13 THE COURT: Let's stop there.

14 MS. CLEMENT: Okay.

15 Q (By MS. CLEMENT) Can you give us an example of a time
16 where this became a very big deal where a move-in didn't
17 happen that you had projected in a prior week?

18 A Um, yes. There was, um, a move-in that was scheduled
19 to occur at the memory care building in Fremont and the
20 ambulance transported the, um, the resident, the person who
21 was supposed to move in from the hospital and was actually
22 in the parking lot but they did not have the necessary
23 paperwork completed, the physician's report and all of the
24 the, um, um, regulated forms that the State requires for a
25 move-in. And the, um, staff at the building turned the
26 resident away, um, which is really what they are supposed to
27 do but --

28 Q So hold on. Let me ask another question.

1 What happened as a result of you making that report
2 that the move-in didn't happen as expected?

3 A Oh, it was a huge big deal. Huge big deal.

4 Q What do you mean?

5 A That we lost a move-in because they were in the
6 parking lot and they would not admit the -- the resident
7 because the -- the paperwork was not completed by the
8 physician. It's called a 602 and that's the physician's
9 statement, and, um, the State requires that physician's
10 statement be filled out completely prior to admission to
11 make sure there is no communicable diseases or medical, um,
12 um, conditions that are not, um, fit for assisted living
13 admission.

14 Q Okay. I'm going to stop you right there --

15 A Uh-huh.

16 Q -- and ask you a follow-up question.

17 On the next week call was there any response to your
18 report that a resident -- a sale had been lost because the
19 resident didn't have the State-required paperwork?

20 A Um, yes. They were, um, very upset.

21 MR. REID: It's non-responsive at this point.

22 THE COURT: That question just called for yes or no.
23 Follow-up, please.

24 MS. CLEMENT: Yes.

25 Q (By MS. CLEMENT) Was there anyone new on the call
26 that week?

27 A Um, the -- what is his title -- executive vice
28 president of nursing, Mr. Amparo, um, was a guest on the

1 call to, um, join in on the discussions as to why this
2 move-in was lost.

3 Q Okay. Let me ask you this: Did that subject of the
4 lost sale come up?

5 A It did come up.

6 Q And who raised it?

7 A I don't recall exactly who raised it.

8 Q Did Mr. Amparo speak about the lost sale?

9 A Yes.

10 Q And what did he say?

11 A He said that we have a "no barriers to sale" policy
12 throughout the company and this never should have happened.
13 The staff should have accepted the resident. I understand
14 that there was no physician's statement completed, but we
15 are not going to let that be an obstacle to preventing a
16 move-in. Um, if this ever happens again we are going to
17 take the resident, especially when they are sitting in the
18 parking lot, regardless of whether there is a 602 and we
19 will worry about that later.

20 Q Did Mr. Amparo say anything else in that conversation?

21 A He said, Our priority is to get the heads on the beds.

22 MS. CLEMENT: Is this a good time to end?

23 THE COURT: Yes.

24 Terrance, do they have their parking passes for next
25 week? All right.

26 Ladies and gentlemen, please remember the admonitions.
27 You have not heard all of the evidence in the case. Leave
28 your notebooks on the chairs. I will see you, um, next

1 week, which is a full Monday through Thursday week, nine
2 o'clock. We are in recess.

3 We need you back Monday at 9:00 a.m.

4 THE WITNESS: Okay.

5 **(The following proceedings were held in open court, outside**
6 **the presence of the jury:)**

7 THE COURT: You can step down. Thank you.

8 THE WITNESS: Okay.

9 THE COURT: All right. My understanding is we need to
10 talk about something.

11 MR. REID: Yes. Very briefly.

12 THE COURT: You can be seated.

13 MR. REID: Thank you.

14 Ms. Clement and I have been discussing the, um, issue
15 with, um, um Lynda Kittle. Sorry. Pardon me. And we have
16 both -- we have exchanged proposals. We are at a little bit
17 of an impasse on resolving it. I talked to Ms. Clement
18 today about the following, and she's agreeable with this:
19 You had ordered us to prepare and file our motion by noon
20 tomorrow. It will be ready by noon tomorrow.

21 I am asking the Court to allow us to serve the motion
22 by noon tomorrow but not file it until noon on Monday so
23 that -- and then allow Ms. Clement and I an opportunity over
24 the weekend to re -- discuss a little bit more about our
25 counter-proposals and see if we could reach an agreement.

26 MS. CLEMENT: I, um -- well, what was discussed
27 yesterday was there was a proposal that, um, Ms. Kittle not
28 be called at all as a witness in this case, and my concern

1 **(The following proceedings were then had in open court, in**
2 **the presence of the jury.)**

3 COURT ATTENDANT: All rise. Department 45 of the
4 Sacramento Superior Court is now in session. The honorable
5 Judge Judy Hersher now presiding. You may be seated.

6 THE COURT: All right. Welcome back, everyone. All
7 right. We are going to pick up where we left off on
8 Thursday.

9 Ms. Clement.

10 MS. CLEMENT: Thank you, your Honor.

11 CONTINUED TESTIMONY OF
12 LISA PAGLIA, Witness called under Evidence Code 776 on
13 behalf of the Plaintiffs,

14 RESUMED CROSS-EXAMINATION

15 By LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
16 the Plaintiffs:

17 Q Ms. Paglia, when we broke on Thursday we were talking
18 about a scheduled conference call in which Budgie Amparo was
19 a guest speaker. Do you remember that?

20 A Yes.

21 Q And can you tell us, um, who else was on that call
22 besides yourself and Mr. Amparo?

23 A It was Lisa Hulse, Catherine Ratelle, Angela Neale,
24 myself, Eloisa, and I believe it was Tracy, Tracy Flaherty.

25 Q And, um, what was your understanding of what
26 Ms. Ratelle's position was with the company at that time?

27 A Um, she was the vice president of the, um, California
28 regional division.

1 Q And, um, did you understand that she was operations --
2 vice president of operations?

3 A Yes.

4 Q And, um, do you recall anything that Ms. Ratelle said
5 in that conversation that -- excuse me.

6 Do you recall anything that Ms. Ratelle said during
7 that, um, telephone conference call that you had, the weekly
8 sales meeting?

9 A Um, well, she always led the calls.

10 Um, so are you asking specifically for something --

11 Q Yes.

12 A -- other than was --

13 Q Yes. Let me rephrase.

14 You told us on Friday or, excuse me, on Thursday that
15 Mr. Amparo had related that he was -- there was a "No
16 barriers to sales" policy and they needed "heads in the
17 beds."

18 Did Mr. Amparo say anything else on that call?

19 A Um, besides not worrying about having the proper
20 paperwork filled out?

21 Q Yes.

22 A Um, I can't think of anything.

23 Q How about Ms. Ratelle or any of the other
24 participants, do you recall anything specifically they had
25 to say with regard to this lost sale that you had to raise
26 and discuss at that meeting?

27 A Um, you're referring to the one that they turned it
28 down in the parking lot because they didn't have the proper

1 documentation?

2 Q Yes.

3 A Um, yes. One thing that does, um, come to mind that
4 she did kind of drive home based on that whole entire
5 conversation was, um, that the projections absolutely had to
6 be dead-on accurate because they had to report these numbers
7 to the shareholders every week and when the numbers were bad
8 we were all making the VPs look bad. Um, so I do recall
9 that coming up in the conversation because she was, um, very
10 angry about the move-in not happening and throwing the
11 numbers off that were reported that they had already
12 reported to the shareholders.

13 Q Now, these projections, what -- what does that mean,
14 the projections that you just talked about in that sentence?

15 A Projections were the numbers that were gathered based
16 on how many, um, move-ins the sales people -- definites
17 would be already having deposits and move-in dates, and then
18 hot leads and maybe warm leads. So projections were being
19 able to, um, determine how many move-ins each building would
20 actually have, um, on a monthly basis and we -- we reported
21 them on a weekly basis. So it was cumulative.

22 So if I reported that, um, there were going to be ten
23 move-ins at the end of the month for any given building and
24 maybe it was the third week of the month and we had eight so
25 far, by the end of that month I was pretty much, um, telling
26 my reports that we definitely were going to have at least
27 two more for the month.

28 Q And had you ever had that experience at any other time

1 in your employment where you had a projection that you had
2 reported the week before and then the numbers didn't
3 actually turn out to be the same?

4 A Yes. It happened, um, regularly.

5 Q And what was the response from your superiors when
6 your projections didn't match the reality?

7 MR. REID: That's vague, your Honor.

8 THE COURT: Vague as to what?

9 MR. REID: As to her "superiors", who she is talking
10 about.

11 THE COURT: She can answer.

12 THE WITNESS: Um, they weren't happy about it because,
13 again, it was, um, spoke of very frequently that those are
14 the numbers -- they were relying on those numbers to be
15 accurate because those are the numbers that they were
16 reporting to, um, the executives and to the shareholders.

17 Q (By MS. CLEMENT) Now, about this issue of losing the
18 sale because the resident arrived without the proper
19 paperwork from the hospital and that included not having the
20 physician's report, the 602s.

21 Did you ever hear that directive from anyone else,
22 other than Mr. Amparo, that Emeritus didn't care about
23 getting those 602s, we need to get the buildings filled?

24 A Yes. That, um --

25 Q From whom else did you hear that from?

26 A From, um, my direct supervisor, Angela Neale.

27 Q And was Ms. Neale -- what was her job title?

28 A She was the vice president of sales and marketing for

1 the California division.

2 Q And where did you hear this directive from Ms. Neale?

3 A Um, I conducted a two-day training at our -- my Tracy
4 building for both regions one and two in October of '08.
5 And, um, she attended on the first day and it came up in the
6 conversation, um, about -- well, just kind of as a sidebar,
7 aside from the actual training, um, it came up about --
8 under this whole, um, drive of "No barriers to sales", and,
9 um, she basically repeated what, um, Budgie Amparo had said
10 on the phone call, that we are not going to allow anything
11 to stand in the way of a sale or getting a move-in,
12 including the 602, the physician's statement, any of the
13 required State documentation, um, because we don't want any
14 obstacle to getting a sales, quote, move-in. And, um --
15 well, that answers your question.

16 Q Yes.

17 Now, who attended this meeting, this two-day training
18 that you put on at the Tracy building for regions one and
19 two?

20 A Um, all of the executive directors and sales and
21 marketing or CRDs were invited, and there were probably 25
22 who attended.

23 Q And the training session that you attended and
24 presented, did Ms. Angela Neale, um, say to the audience of
25 executive directors and facility sales -- CRDS, sales
26 directors, did she say this directive, that they weren't
27 supposed to worry about the physician's reports?

28 A She said it to the entire group.

1 Q And what was the response?

2 A Um, it was outrage. In fact, I remember one of the
3 executive directors said, um -- his response was, you know,
4 I don't feel comfortable with that at all. That's my
5 license on the wall, it's not Emeritus' license on the wall,
6 and you're basically telling me to do something that's
7 against the law. And her response to that was, Don't worry,
8 Emeritus has your back. And, um, then we took a break after
9 that.

10 Q So at this break did you do anything?

11 A Well, she walked out of the room to, I think, make a
12 phone call, and, um, before everybody exited the room there
13 was a lot of scuffle and discussion about hearing that it
14 was okay not to -- to, um, admit people without the 602 and
15 everybody was very up in arms about it, especially executive
16 directors because they are responsible for everything in the
17 building and it's their personal license that's, um, that's
18 representing the company to the State. So there was a lot
19 of, you know, just really, um, disbelief that they -- it's
20 like, did we really hear what was just said.

21 So, um, I went -- I left the training room and I went
22 to find Angela Neale. I approached her and I said, you
23 know, a lot of the people after you, um, left the room are
24 very concerned and very upset about being told that, um,
25 it's okay to admit residents without the 602 and, um --

26 Q What was her response, if any?

27 A Well, I wanted her to know how upset everybody was and
28 maybe she should go back in and kind of diffuse the

1 situation. And she got really, really angry with me, and
2 she said, um, I don't care, you know, just don't you --
3 don't you say anything. And then she stuck her finger in my
4 face like that (demonstrating) and said, And don't you dare
5 contradict me. So I just kind of dropped it at that point.

6 Q Now, after that meeting, um, with your alone time with
7 Angela Neale, did Ms. Neale go back into the training
8 session?

9 A No. She had to leave.

10 Q After that meeting did you speak with anyone from
11 Emeritus Corporate about concerns that you had with regard
12 to business practices that you disagreed with that were
13 being imposed upon you and your colleagues?

14 A Um, are you asking me if I spoke to somebody after
15 that?

16 Q Yeah. After that meeting did you speak with anyone
17 from Emeritus, um, or -- let me rephrase that.

18 At any time did you speak to anyone from Emeritus
19 where you had concerns about business practices that were
20 being imposed upon you and your colleagues?

21 A Um, on several occasions I brought things up on, um,
22 business calls, on regional calls, and also on one-on-one
23 calls with, um, Angela who was my supervisor.

24 And then, um, I think about two -- it was maybe two
25 months prior to this training that I did in October, um, I
26 wasn't really getting any serious feedback that there was
27 any concern on these -- through these discussions, um, so I
28 actually ended up calling the Ethics First Hotline that the

1 company offered to, um, bring things forward, bring things
2 out in the open and was supposed to, you know, you could be
3 anonymous and you are supposed to be protected from
4 retaliation and any type of, um, you know, consequences for,
5 um, coming forward.

6 Q So when did you -- did you make more than one call to
7 Ethics First?

8 A I think I made at least two.

9 Q And can you tell the jurors what you reported on your
10 first call to Ethics First?

11 A I believe the first call I made was in regard to, um,
12 the irrational and abusive behaviors of, um, Ronda
13 Castleberg because she had originally been on my
14 collaborative team, um, in region two and I had had some
15 pretty horrible experiences with her personally and also
16 hearing from executive directors and sales people and staff
17 in my region, um, about how she abused staff and just yelled
18 and screamed. Then she transferred to region one and I was
19 hearing the same exact feedback from various sources about
20 the same behavior.

21 So, um, it had been brought to Angela Neale's
22 attention, Catherine Ratelle's attention, Lisa Hulse's
23 attention, and they basically just, um, disregarded the
24 behavior, actually even condoned the behavior because, um,
25 it was said by both Catherine Ratelle and Angela Neale that,
26 well, we don't care how she gets the results, she gets the
27 results, so we are not going to worry about how she's
28 achieving it.

1 And, you know, it just -- it was like knocking your
2 head against a brick wall trying to get this behavior to --
3 to cease and --

4 MR. REID: Your Honor, this is non-responsive and a
5 narrative.

6 THE COURT: Let's go question by question, please.

7 MS. CLEMENT: Okay. Sure.

8 Q (By MS. CLEMENT) What did you tell the Ethics First
9 Hotline? Did you do it by phone, e-mail, how did you report
10 it?

11 A I did it by phone.

12 Q And what did you tell on that first call?

13 A I just described some of the behaviors and some of the
14 things that were being reported to me when I went into my
15 buildings and what I'm hearing from my counterparts in
16 region one and, um, gave a couple of examples.

17 Q Now, what was the second time -- why did you call
18 Ethics First another time?

19 A Because, um, again, I was frustrated. I wasn't the
20 only one. There were many people that were frustrated
21 over --

22 MR. REID: Your Honor, this is non-responsive and it's
23 hearsay as she is answering the question.

24 THE COURT: The question was, What was the second
25 time -- why did you call the Ethics First another time?

26 THE WITNESS: To report the bad and corrupt business
27 practices that I was witnessing at the company.

28 Q (By MS. CLEMENT) And can you describe for the jurors

1 what were those practices that you were witnessing that you
2 reported on your second Ethics First Hotline call?

3 A Unnecessary terminations, um, understaffing, putting
4 people in positions that shouldn't be in the positions,
5 abusive behaviors, just -- just kind of the theme of it.

6 Q Did you get any response from the Ethics First
7 Hotline?

8 A They said, Thank you for calling. We will, um -- they
9 wrote down everything I said. And they said, You can call
10 back in, I think it was, three weeks, um, and they would let
11 me know the status of my report, my complaint.

12 Q And did you call back and hear any status on the
13 complaints that you had?

14 A I did call back in about three weeks or maybe I waited
15 a couple of days over the three weeks and I was given a
16 number to refer -- a reference number. And I called the
17 reference number and the only thing that they told me both
18 times that I called and followed-up was, We have received
19 your complaint, we have turned it over to the proper people,
20 and it's pending. That was all I ever heard. Nothing else.

21 Q Did you ever, um -- remind us who John Cincotta is?

22 Oh. John Cincotta is the, um -- I think his correct
23 title is senior vice president of sales and marketing for
24 the entire country for Emeritus Corporation.

25 Q And you had known him back ten or twelve years earlier
26 when you worked for Emeritus; true?

27 A I didn't really know him personally, but I knew of him
28 and he knew of me.

1 Q And when you were hired he was one of the people that
2 interviewed you?

3 A The first time?

4 Q Um, the second time when you were hired in 2008.

5 A Yes. The second time, yes, he did interview me.

6 Q Did you ever reach out to Mr. Cincotta?

7 A Um, actually, no, he reached out to me.

8 Q And what did Mr. Cincotta reach out to you about?

9 A He called me one day out of the blue. In fact, I
10 remember I was at the San Pablo building. And he called me
11 and said, I like to reach out to my regionals every once in
12 a while because you're the ones that are in the field on a
13 regular basis, you hear and see what's going on in your
14 buildings, and I'm, you know -- I try to get to everybody at
15 some point, and I'm calling to find out how things are going
16 for you.

17 Q And what did you tell Mr. Cincotta?

18 A I said, John, to be perfectly honest with you, I'm not
19 really happy with the way things are going.

20 Q Did you tell him why?

21 A Yes.

22 Q And what did you tell him?

23 A I said, If you recall when you and I had our lengthy
24 interview over the phone you asked me what -- one of the
25 questions that you asked me is, Lisa, what's your management
26 style, and I said, I strongly believe in mentoring people,
27 in training people, in, um, training by example and giving
28 people the tools that they need to be successful in their

1 positions, and he said, That's exactly what I was hoping you
2 would say because that's exactly my philosophy for my
3 managers. And I said -- this is during the interview. And
4 I said, Well, good, then we are right on the same page about
5 that.

6 Q So when he called you after you've made these Ethics
7 First Hotline complaints, what did you tell him you were not
8 happy about at that point?

9 A I said, John, I said, you know, we had this discussion
10 in the interview that, um, this is the company philosophy
11 and this is why you were hiring me because this is what you
12 wanted in your regional, and I said, you know, it's -- this
13 is not what I signed up for. I said, All I'm being told to
14 do is fire my sales people. I said, There is no training,
15 there is no mentoring, they just -- if they are not making
16 their numbers, I'm being told to get rid of them. And I
17 said, I'm not comfortable with that, I don't believe in it,
18 it's not the right thing to do. And I said, I'm seriously
19 thinking about leaving the company.

20 Q And what did he say in response?

21 A He -- he begged me and talked -- um, he begged me not
22 to quit and he talked me out of it. He said, No, no, no,
23 no, no, what you're saying is exactly what I believe in,
24 you're doing the right thing, and he said -- oh, I know what
25 he said. He said, um, The vice presidents are all new in
26 their positions. They came up from regionals too and they
27 are still in the learning process. He said, If I don't talk
28 to people like you who are like, you know, in the trenches,

1 I'm not going to know what they need help with so this is
2 very valuable me. And I said, Well, I don't think I really
3 want them to know that we had this conversation, and he
4 said, Don't worry, it's completely confidential.

5 Q And did you tell him that the people that you were
6 being told to fire didn't have the tools that they needed to
7 be successful --

8 A Of course.

9 Q -- to make their numbers?

10 A Of course I did.

11 Q And what were those tools that they needed to be
12 successful to meet their numbers in their buildings, in
13 other words, to fill the buildings?

14 A They needed training on, um, sales -- the sales
15 process. You know, it's -- it's a complicated position and
16 they needed better training. But that's -- you know, it
17 takes time, it doesn't happen overnight.

18 Q And did you talk to him at all in that conversation
19 about problems in the buildings themselves on the operations
20 side of things?

21 A Yes.

22 Q And what did you tell him about that?

23 A Same thing that, you know, I have been talking about
24 for four or five, six months; understaffing, sell, sell,
25 sell, um, just -- there were three very often used catch
26 phrases in the company. It was "No barriers to sales --

27 MR. REID: This is non-responsive, your Honor.

28 THE COURT: Sustained.

1 MS. CLEMENT: Yeah.

2 THE COURT: Let's go question by question, please.

3 Q (By MS. CLEMENT) Was there something -- were there
4 phrases that were repeated to you that you thought were
5 contrary to what Mr. Cincotta had told you was the
6 philosophy of the company when you were hired?

7 A Yes.

8 Q And what were those phrases?

9 A Well, there were three. It was, "No barriers to
10 sales", "heads in the beds", and, "keep that back door
11 closed".

12 Q And what did you understand "keep that back door
13 closed" to mean?

14 A Don't let anybody move out unless they were deceased.

15 Q And -- and even after they were deceased what was your
16 understanding of what Emeritus' policy was with continuing
17 to collect rent from them?

18 A Um, they -- the families were obligated to pay for an
19 additional 14 days after a passing.

20 Q Was that something that sat well with you?

21 MR. REID: It's irrelevant, your Honor.

22 THE COURT: Sustained.

23 Q (By MS. CLEMENT) After your phone call with John
24 Cincotta did you have any response from Angela Neale, your,
25 um, immediate supervisor?

26 A I remember she called me shortly after the
27 conversation I had with John, and I don't remember exactly
28 what she said in the conversation but she said something

1 that really caught my attention that I had discussed with
2 John. And the only way that she would have known what she
3 was saying to me was if John had, um, discussed my
4 conversation with him with her. And I knew he talked to
5 them about it after that because that's the only way she
6 would have known, and I don't recall exactly what it was.

7 Q Did you ever go to Audrey Withers, the human resources
8 director for the State of California with concerns?

9 A I did run a couple of things by Audrey just to test
10 her out. She was known for not being trustworthy and --

11 MR. REID: Your Honor, um, it's non-responsive and
12 lacks foundation.

13 THE COURT: Sustained. Let's stay within the scope of
14 the question, please.

15 MS. CLEMENT: Certainly, your Honor.

16 Q (By MS. CLEMENT) Was there a reason why you didn't go
17 to Audrey Withers with your complaints that you raised with
18 Ethics First and with Mr. Cincotta?

19 A Yes.

20 Q And why was that?

21 A Because I was worried she would go running right back
22 to Angela, Lisa and, um, Catherine and that I would be
23 retaliated against.

24 Q In these conference calls that you had weekly, um, who
25 was being blamed for the financials not hitting the numbers?

26 A I think company wide everybody that was below any
27 level got the blame.

28 Q What do you mean by "below any level"?

1 A Well, if you're a vice president then it would be the
2 regional's fault or anybody below their level. It just kind
3 of fell downhill.

4 Q Now, did you remain -- after you had made these
5 conversations -- had these phone calls with Ethics First and
6 then Mr. Cincotta, did you remain in your position as
7 regional director of sales and marketing for region two?

8 A Um, for a couple more months I did.

9 Q And then what happened?

10 A I was asked to, um -- if I would agree to move into
11 another position.

12 Q And what position was that?

13 A It's called a sales specialist.

14 Q And was that a position that had previously existed?

15 A Yes.

16 Q And was this position, um, a promotion or something
17 else?

18 A It wasn't a promotion, no. And it wasn't a managerial
19 position.

20 Q Did you consider it a demotion?

21 A I -- I did, yes.

22 Q And did you agree to take that sales specialist
23 position?

24 A Yes, I agreed.

25 Q And who asked you to take the sales specialist
26 position?

27 A My boss, Angela Neale.

28 Q And what did she tell you as to why you were going to

1 go into this new position away from being a regional to a
2 sales specialist?

3 A The reason I was given was because I covered a lot
4 of -- I had a lot of, um, turnover in my -- in my region and
5 I covered a lot of my buildings and every time I covered
6 sales in my buildings I made a lot of sales. And I was told
7 that my skills as a salesperson were much more valuable to
8 the company, um, than, um, being in a regional position.
9 They needed a strong salesperson.

10 Q And so what was your -- your understanding of what
11 your job was going to be as a sales specialist?

12 A To, um, to -- it's kind of like being a relief
13 pitcher. You go into the building that you're assigned to
14 and help bring sales -- sales up, bring the census up, make
15 sales, get move-ins for, um, whatever period of time was
16 designated.

17 Q And why did you take the position?

18 A Seriously, the reason why I took the position --

19 Q Yeah.

20 A -- I wanted to get out from under Angela Neale and
21 Catherine Ratelle.

22 Q And why was that?

23 A Um, because they were abusive, and, um, I was under a
24 lot of stress. I really liked working in the field, but
25 I -- I was changing as a person.

26 Q So when did you take -- take this new sales specialist
27 position?

28 A I think it was the third week of November of 2008.

1 Q And what was your first assignment?

2 A Um, the building in Paso Robles.

3 Q And how long -- who was your supervisor then?

4 A Um, it changed from Angela Neale to a woman I had
5 never met by the name of Maura. I had only spoken to her on
6 the phone.

7 Q And how long were you in that position as sales
8 specialist?

9 A Four days.

10 Q And what happened at that point?

11 A Angela Neale showed up and terminated me.

12 Q And what happened -- can you tell the jury what
13 happened?

14 A I started my new position on Monday. I -- I was
15 assigned to the Paso Robles community because they, um,
16 wanted to fill the building. She called me, I think it was
17 on Tuesday, to see how things were going. I told her things
18 were going really well, um, and she said, Great. And she
19 showed up two days later and escorted me out of the building
20 and terminated me.

21 Q Did you ask her why you were being fired?

22 A Of course.

23 Q And what did she say?

24 A She said she wouldn't give me a reason and I didn't
25 need to know.

26 Q Well, did you challenge that when she said she didn't
27 need to give you a reason, you didn't need to know why you
28 was being fired?

1 A I did. I pushed it. What I said to her is, I have
2 never, ever been disciplined. I have been on the job eight
3 or nine months, I have never been disciplined, I have never
4 been put on a performance improvement plan, I don't
5 understand this. I said, You just show up and fire me and
6 don't give me any reason, I don't understand this. So then
7 she said, Well, you're just not a good fit for the company,
8 and that was it.

9 Q Did you have a company-issued laptop and phone?

10 A Yes.

11 Q And, um, when Ms. Neale terminated you, um, did she
12 take those from you?

13 A Um, yes. But I think I left my laptop in my hotel
14 room, and she actually followed me to my hotel room to get
15 the -- to collect everything that belonged to the company.
16 She -- actually Tracy was with her, so the two of them
17 followed me to my hotel room and waited for me to bring the
18 things to them.

19 Q Did you want to come here to testify?

20 A No, I didn't.

21 Q And can you tell the jurors why you didn't want to
22 come to testify?

23 A You know, this all happened almost five years ago. I
24 thought it was behind me. Um, Ms. Clement actually hired a
25 private investigator to track me down and I was served with
26 a subpoena. And I understood that if you're served with a
27 subpoena you're court ordered to testify and you don't
28 really have a choice, so that's why I'm here.

1 MS. CLEMENT: Thank you, Ms. Paglia.

2 No further questions, your Honor.

3 THE COURT: Mr. Reid?

4 MR. REID: Yes. Thank you, your Honor.

5 Good morning, ladies and gentlemen.

6 REDIRECT EXAMINATION

7 By BRYAN R. REID, Attorney at Law, Counsel on behalf of the
8 Defendants:

9 Q Ms. Paglia, good morning.

10 A Hi.

11 Q I want to spend a little time and follow-up on a few
12 things with you, okay?

13 A Sure.

14 Q All right. One question that just jumped out at me
15 and I wanted to clarify, is it your testimony that when you
16 were in those eight months you were working, um, as a
17 regional, um, director of sales and marketing that you felt
18 like there wasn't enough training for sales?

19 A Yes.

20 Q Okay. That is what I thought you said.

21 Um, since you were subpoenaed and you didn't want to
22 testify, does that mean that you've never met with
23 Ms. Clement before coming in here to testify?

24 A I met with her once.

25 Q When was that?

26 A It was -- I think it was, um, late December, the last
27 week of December.

28 Q Where did you meet her?

1 A At her office.

2 Q Where do you live?

3 A I live in Placerville.

4 Q How far is your home to her office?

5 A It's about an hour.

6 Q So did you drive in and meet with her at her office?

7 A After I received the subpoena, yes.

8 Q Did you understand the subpoena compels you to go to

9 Ms. Clement's office to meet with her?

10 A I didn't know.

11 Q Did you ask anybody?

12 A No.

13 Q Did any -- was it your impression that the subpoena

14 obligated you to meet with and speak with Ms. Clement before

15 testifying?

16 A Yes, it was my impression.

17 Q How long did you spend speaking with Ms. Clement that

18 day?

19 A Maybe 45 minutes.

20 Q And you talked to her about the things that you've

21 testified to in trial then?

22 A Um, well, no. She called me in to, um, explain her

23 case and why she, um, wanted me to be a witness in her case.

24 Q So she told you what she was wanting you to testify

25 to?

26 A No, she didn't tell me what she -- well, she told me

27 about the -- the -- the people that she was representing and

28 why she was calling me in to be a witness on this trial.

1 Q Did she show you any, um, segments of videotaped
2 deposition in that meeting?

3 A No.

4 Q Did she show you any documents?

5 A No.

6 Q Now, I want to go through your employment history.
7 First of all, something we haven't heard yet, um, is
8 that after you were terminated you filed a wrongful
9 termination lawsuit against Emeritus, didn't you?

10 A Yes, I did.

11 Q You're no friend of Emeritus; true?

12 MS. CLEMENT: Objection, your Honor, argumentative.

13 THE COURT: She can answer.

14 THE WITNESS: Um, I don't really consider myself a
15 friend or a foe. It's just --

16 MR. REID: All right.

17 THE WITNESS: -- what it is.

18 Q (By MR. REID) Okay. So you were hired, um -- you
19 started your position as regional director of sales and
20 marketing on April 7th, 2008, correct?

21 A That sounds about right.

22 Q And at that time Ronda Castleberg Smith was the
23 regional, um, regional director of operations?

24 A No, she wasn't.

25 Q She wasn't?

26 A No.

27 Q Who was the regional director of operations when you
28 started in April of '08?

1 A There wasn't one.

2 Q Okay.

3 A The --

4 Q So when did Ms. Castleberg Smith get on board?

5 A I want to say maybe it was two months later.

6 Q Two months later?

7 A Maybe two months later.

8 Q So May, June it's your memory that Ms. Castleberg
9 Smith became regional director of operations for division
10 two?

11 A Yes.

12 Q So June she became the regional director of operations
13 in division two which doesn't include Emerald Hills, right?

14 A Correct.

15 Q And how long did you work with Ms. Smith before she
16 moved over to division one?

17 A I don't -- just for the record, I don't want to state
18 that I know for sure it was June, but for sure she was not
19 in her position when I worked because I actually interviewed
20 her. I was on the panel to interview her. So it was at
21 least a month after I started.

22 And I want to say she was in her position two or three
23 months before she transferred over to region one. I don't
24 know exactly how long.

25 Q So this conflict -- all of this conflict that you had
26 with Ms. Castleberg -- now Smith, she got married -- was in
27 a two or three month time frame?

28 A Yes.

1 Q Okay. Because you were only there eight months --

2 A Correct.

3 Q -- anyway?

4 A Right.

5 Q So you had conflict with Ms. Smith, um, Castleberg at
6 the time, right, and you had conflict with Ms. Neale,
7 correct?

8 A No, I didn't really have too much conflict with
9 Ms. Neale.

10 Q So you didn't have a problem with Ms. Neale who was
11 your boss; is that your testimony?

12 A I had a problem with the way she managed. I didn't
13 personally have a problem.

14 Q So then you -- did you think her to be a fair person
15 towards you?

16 A Um, no.

17 Q So she wasn't fair to you but you didn't have a
18 problem with her?

19 MS. CLEMENT: Misstates the testimony, your Honor.
20 Misstates testimony. It's argumentative.

21 THE COURT: Sustained.

22 Q (By MR. REID) Okay. Now, during the course of your
23 employment, um, you testified you made a ethics -- made a
24 couple of Ethics First complaints; true?

25 A Yes.

26 Q And isn't it true that after you made the Ethics First
27 complaints Mr. Cincotta, um, praised you for coming forward?

28 A Yes.

1 Q Now, the reality is that during the time frame that
2 you were regional director of sales and marketing for
3 division two you were counseled periodically about, um,
4 areas you could improve in your job; true?

5 A Um, yes. I was told that it takes at least a good
6 couple of years of training to become a seasoned regional
7 director of sales and marketing, so that was part of the
8 training process.

9 Q Okay. So let's talk about July of 2008. Now, um, so
10 we are about four months into your tenure; true?

11 A Uh-huh.

12 Q Yes?

13 A Yes.

14 Q Sorry. We have to have words --

15 A Oh, okay.

16 Q -- for the record.

17 A I'm sorry.

18 Q Do you recall that there was a two-day, um, meeting
19 that you attended in, um, July of 2008?

20 A Um, I attended a lot of meetings. I don't know which
21 one you're referring to.

22 Q All right. Well, this is the one where Ms. Neale sent
23 you an e-mail on July 14th giving you feedback about the
24 meeting. Do you have that in mind?

25 A No.

26 Q Do you remember Ms. Neale counseling you about your
27 behavior and conduct at that meeting?

28 A No.

1 Q Do you remember Ms. Neale sending you an e-mail in
2 July -- on July 14th, 2008, saying that there was a
3 perception that you were dozing off on occasion on both
4 days?

5 A Oh, yes, I remember that.

6 Q Okay. And do you remember that Ms. Neale told you
7 that as a manager it's very important for you to exhibit
8 leadership at all times, including site visits and meetings?

9 A I wasn't dozing off at that meeting. I had my head
10 like this (demonstrating), reading along with the training
11 manual.

12 Q Okay. All right. I didn't ask you that.

13 Do you remember Ms. Neale on July -- in July of 2008
14 telling you that it's very important for you to exhibit
15 leadership at all times?

16 A I don't specifically remember that.

17 Q Do you remember Ms. Neale sending you an e-mail
18 telling you that while you should have been leading some
19 small group meetings you were on the phone and not doing
20 the -- the leadership?

21 A I was one of many people on the phone. We were
22 expected to, um, conduct our regional business at the same
23 time we were in these trainings.

24 Q Okay. I just want to know if you remember Ms. Neale
25 counseling you about, um, a problem of you being on the
26 phone when you were supposed to be running small group
27 meetings?

28 A No because I was on the phone during a break.

1 Q Okay. Then in August of 2008, August 29th, um, do you
2 recall getting counseled by Ms. Neale in August of 2008?

3 A Not specifically.

4 Q Okay. Do you recall, um, Ms. Neale telling you that
5 you were not holding your team members accountable to --
6 particularly the sales people accountable to following-up on
7 leads?

8 A No, I don't remember that.

9 Q Do you remember Ms. Neale, um, counseling you that you
10 needed to be more proactive in working with the people you
11 were supervising and not just saying, well, I'm coaching
12 them?

13 A Do I remember that?

14 Q Yes.

15 A I don't specifically remember that.

16 Q Okay. Does it sound familiar that there was a -- that
17 you were being counseled around August of 2008 that it --
18 you needed to be more proactive and a response to your
19 supervisors that you're coaching them wasn't sufficient?

20 A I don't specifically remember that. And I don't
21 consider it counseling. I don't think it's unusual that she
22 might have talked to me about that as part of my ongoing
23 training.

24 Q Okay. Did -- and in August of 2008 did Ms. Neale
25 share with you, do you recall, um, that there was an
26 impression that you were having trouble prioritizing your
27 tasks?

28 A No.

1 Q Do you have any memory of ever being counseled that
2 there was an impression that you were having trouble
3 prioritizing your tasks?

4 A I don't specifically remember that. It may have
5 occurred as part of our ongoing conversations in that she
6 was training me to be a good regional.

7 Q Okay. Now, in September of 2008, um, you were
8 counseled by Ms. Neale again, correct?

9 MS. CLEMENT: Objection, it's -- it misstates
10 testimony. Argumentative.

11 THE COURT: Sustained.

12 Q (By MR. REID) Do you recall being counseled again in
13 September of 2008 by Ms. Neale?

14 MS. CLEMENT: Same objection, your Honor, same
15 question.

16 THE COURT: The witness can respond if she agrees or
17 disagrees.

18 THE WITNESS: Again, I don't specifically remember
19 being counseled on any specific dates.

20 Q (By MR. REID) Okay. Well, probably you remember this
21 because you -- you've testified that you, um, were told by
22 Ms. Neale that you needed to try to be accurate in the
23 projections that you were making?

24 A Correct.

25 Q Okay. And do you remember that in particular in
26 September of 2008 that your numbers were way off in your
27 projections?

28 A There were a couple of times where my numbers were not

1 as accurate as they would have liked them to be.

2 Q Okay. In September of 2008 do you have a recollection
3 of, um, um, being counseled that you needed to develop a
4 schedule to -- for times to meet with your collaborative
5 team members?

6 A I'm sorry, I don't understand the question.

7 Q Do you remember being counseled in or around September
8 of 2008 that it was important for you to schedule time to
9 meet with your team members?

10 A I scheduled time with my team members on a weekly
11 basis. Sometimes it was more than once a week, it was
12 several times a week.

13 Q Okay. And in September of 2008, um, do you recall
14 being counseled that as the regional director of sales and
15 marketing, um, you were being held accountable to make sure
16 that your team was -- your -- your sales team were doing
17 their job?

18 A That was part of my responsibility, absolutely.

19 Q And do you remember being told that, um, Angela Neale
20 was looking for specifics from you in terms of how you were
21 working with your team members to -- for -- to help them do
22 their job?

23 A I don't specifically remember that but that would not
24 be, um, absurd. I mean, yeah.

25 Q Do you remember Ms. Neale being frustrated with you
26 that your response "I've told them what to do" wasn't
27 sufficient to satisfy your obligations to work with your
28 team?

1 A What is your question?

2 Q My question is, do you have a memory of Ms. Neale
3 counseling you regarding her frustration that when she asked
4 you, What are you doing to help your team, you were
5 answering saying, I've told them what to do?

6 A I think that's just one little encee-weencee segment
7 of an entire conversation.

8 Q Okay.

9 A So...

10 Q Was that discussed?

11 A I was --

12 MS. CLEMENT: Objection, it's vague.

13 THE WITNESS: I went into a lot more specifics and
14 detail about --

15 THE COURT: Hold on. The objection is overruled. She
16 can answer it.

17 MS. CLEMENT: Thank you, your Honor.

18 THE WITNESS: Okay. I went into a lot more detail
19 other than just, I've told them what to do. I was very
20 specific about how I was going through that process.

21 Q (By MR. REID) Do you recall, um, that Ms. Neale, um,
22 in or around September of 2008 asked you to focus on your
23 role as the regional director of sales and marketing and not
24 not get so involved in the operational portion of the
25 business?

26 A Um, I heard that a lot. It wasn't just one time, that
27 was -- that was something that was brought up.

28 Q Okay. And in September of 2008 there was a regional

1 director of operations in region two, right?

2 A Yes.

3 Q And who was that?

4 A I think it was Tracy by then.

5 Q Tracy Flaherty?

6 A Yes.

7 Q Did you get along with her?

8 A Yes.

9 Q Now, in September of 2008, um, did Tracy Flaherty ever
10 share with you any concerns that she had about how you were
11 doing your job?

12 A She told me she thought I was doing a great job.

13 Q So, um, was it ever communicated to you that Tracy
14 Flaherty in September of 2008, um, indicated that you were
15 not holding the CRDs, the local sales people, accountable to
16 Emeritus standards?

17 A Are you asking me if she -- if she communicated that
18 to me? Did she tell me that?

19 Q Or whether you were made aware of that.

20 A Oh, no, no. I -- I -- no. On the contrary, she
21 always told me she thought I was doing a great job.

22 Q In September of 2008 was it ever communicated to you
23 that Ms. Flaherty, your team member, um, thought that you
24 were lacking on follow-through and were not being proactive?

25 MS. CLEMENT: Hearsay, your Honor. Hearsay.

26 THE COURT: It's a little late at this point, but the
27 objection is overruled.

28 You can answer it.

1 THE WITNESS: Could you repeat the question?

2 Q (By MR. REID) In September of 2008 was it
3 communicated to you that Ms. Flaherty, um, expressed that
4 you weren't -- you were lacking follow-through and were not
5 being proactive?

6 A Are you asking me if she told me that or if somebody
7 else told me that she was concerned about that?

8 Q Whether that was ever communicated to you by anyone.

9 THE COURT: That is a different question. Are you
10 asking her a different question now?

11 MR. REID: Um, yes.

12 MS. CLEMENT: Hearsay.

13 THE COURT: All right. Rephrase the question.

14 MR. REID: All right.

15 Q (By MR. REID) In September of 2008 did you have any
16 knowledge of concerns by your team member, Tracy Flaherty,
17 with regard to you not following-through and not being
18 proactive?

19 A I think I've already answered this question, but I was
20 never aware that Tracy Flaherty thought that I was doing
21 anything other than a good job in my position.

22 Q Was -- in September of 2008 was it communicated to
23 you --

24 A No.

25 Q (Laughing) All right. Let me ask the whole question.

26 A Okay.

27 Q In September of 2008 was it communicated to you that
28 there was any impression that, um, you were not following

1 through with your training for your community resource
2 development people, the sales people, in the, um,
3 communities you were overseeing?

4 MS. CLEMENT: Hearsay as phrased.

5 THE COURT: She can answer.

6 THE WITNESS: By anybody?

7 MR. REID: Right.

8 THE WITNESS: No.

9 Q (By MR. REID) Was it communicated to you in September
10 of 2008 that the impression was you were just doing crash
11 courses in training and you weren't following through with
12 the local -- the sales people at the communities?

13 A No.

14 Q In September of 2008 did anyone communicate to you
15 that you recall that there was an impression that at times
16 your presence in the building is distracting and comes
17 across as a dictator rather than to provide support to the
18 building?

19 A I remember something along those lines.

20 Q Do you recall around September of 2008 that there was
21 a concern from Emeritus that when there was an opening in
22 the community resource development position in one of your
23 communities that you were not stepping in to help those --
24 those communities do their marketing efforts?

25 MS. CLEMENT: Objection, it's vague.

26 THE COURT: She can answer it.

27 THE WITNESS: On the contrary. Um, it was around this
28 time, September or August or September of 2008, that John

1 Cincotta made a field trip to the region, um, and took
2 myself and Angela Neale out to dinner to the Olive Garden
3 and he -- she went to the lady's room and he told me I was
4 doing an exceptional job and he thought I was going to be
5 one of the best regionals in the company.

6 Q (By MR. REID) In September of 2008 was it
7 communicated to you that there was a perception that you
8 weren't holding yourself accountable, um, for the over all
9 sales in your division?

10 A I don't recall that.

11 Q All right. Um, do you recall receiving an e-mail from
12 Angela Neale on September 29th, 2008, um, in follow-up to a
13 meeting that you had with her at Creston Village?

14 A Can you be more specific?

15 Q Do you recall receiving an e-mail from Angela Neale
16 where she expressed a concern that your site visits to your
17 communities was directive and not -- you weren't being
18 proactive?

19 A I don't recall that.

20 Q Do you recall receiving an e-mail from Ms. Neale on
21 September 29th, 2008, where she told you that there was,
22 um -- that your team was voicing a concern that you were
23 putting yourself above everyone else?

24 A I don't remember that.

25 Q Do you recall her telling you that there was a
26 perception that you were using your title and making the
27 people in the communities, um, feel below you?

28 A I don't recall that.

1 MR. REID: Your Honor, I would like to, um, approach
2 the witness to see if I can refresh her recollection.

3 THE COURT: Show Ms. Clement, please, what you're
4 talking about.

5 MS. CLEMENT: Am I going to have a copy of this?

6 Do I get a copy of what he is going to show her?

7 THE COURT: I don't know. I don't know if you have
8 had it before or not.

9 MR. REID: I don't have a copy right now. I'll get
10 you a copy.

11 THE COURT: Well, when Ms. Clement gets back up to
12 communicate with the witness, please provide her with that
13 again to look at.

14 MR. REID: I will. I apologize.

15 May I approach the witness, your Honor?

16 THE COURT: Yes.

17 MR. REID: I'm showing you a document. I don't want
18 you to do it out loud, just read it to yourself. I want to
19 find out if this document refreshes your memory of getting
20 an e-mail from Angela Neale where there was --

21 THE COURT: Just show her the document and then ask
22 her the question.

23 MR. REID: Okay. I will help direct your attention to
24 1B there.

25 MS. CLEMENT: Your Honor, could the witness be allowed
26 to read the entire e-mail before answering?

27 THE COURT: I'm sorry?

28 MS. CLEMENT: Is the witness allowed to read the

1 entire e-mail before answering?

2 THE COURT: She can read the entire document that's in
3 front of her before answering the question.

4 THE WITNESS: Okay. So what's your question?

5 Q (By MR. REID) All right. Have you reviewed it? I
6 want to make sure you reviewed it.

7 A I reviewed it.

8 Q Okay. Thank you.

9 I want to ask you if that -- if reviewing that
10 document refreshes your memory of Ms. Neale telling you that
11 there was a concern that you were putting yourself above
12 everyone else and using your title and making people in the
13 communities feel like they were below you?

14 A Are you asking if I now remember this?

15 Q Correct.

16 A Um, to be honest with you, that was four and a half
17 years ago. Obviously she did send me the e-mail because
18 it's addressed to me. I don't really remember it, but, um,
19 part of her job was to give me feedback on how I was doing
20 so I could be better in my position. And if it was really
21 that much of an issue, I would have been put on a
22 performance improvement plan and I was never put on a
23 performance improvement plan. This was all supposed to be
24 training feedback so I could become better in my job. It
25 was her responsibility to give me this feedback.

26 Q Okay. And do you also recall then in the end of
27 September 2009 Ms. Neale expressing to you concern --

28 A 2009? I didn't even work there in 2009.

1 Q I misspoke. My apologies.

2 September 29, 2008, do you have a recollection of
3 Ms. Neale telling you that she was concerned that you had
4 been in your position for six months and it didn't seem as
5 though you were grasping the concepts of your job?

6 A Six months is a blink of an eye in a regional
7 position. I was told when I was hired that it's a good at
8 least two years to learn the job and become a good regional.
9 This is six months. I was a baby at six months.

10 Q So I appreciate that perspective. I'm just wanting to
11 know if you remember Ms. Neale expressing that concern to
12 you that you had been in the position six months and it
13 didn't seem as though you were grasping the concepts of your
14 job?

15 A Are you asking me if I remember that?

16 Q Correct.

17 A No, I don't.

18 Q Now, you testified with Ms. Clement that --

19 A Uh-huh.

20 Q -- you, um, in -- I actually want to see if I can,
21 um -- you testified that in the third week of November of
22 2008 you took a position as a sales specialist?

23 A Yes.

24 Q But, in fact, weren't you terminated in early November
25 of 2008 from Emeritus?

26 A I was terminated on my fourth job -- fourth day on the
27 job in this new position.

28 Q Okay. Do you have a recollection that you took the

1 new position on or about October 27th of 2008 rather than
2 late November?

3 A Um, I don't remember exactly when the job went into
4 effect, but I know I had just started in the new position on
5 the Monday and she came on Thursday and I didn't even report
6 to her anymore.

7 Q Okay.

8 (Discussions were had between attorneys.)

9 MS. CLEMENT: Your Honor, I object to the Defense
10 Counsel showing documents to the witnesses that haven't been
11 marked or shown to me before.

12 THE COURT: Counsel approach, please.

13 (Sidebar conference was held.)

14 THE COURT: I don't know that there is a question
15 pending.

16 MR. REID: I'm going to ask to approach the witness
17 and see if I can refresh her memory as to the date that she
18 took the new position, your Honor.

19 THE COURT: Okay. And Ms. Clement is reviewing a
20 document right now.

21 MR. REID: Correct.

22 THE COURT: Okay. Thank you.

23 Ladies and gentlemen, it will just be a minute.

24 MR. REID: Thank you.

25 May I approach the witness, your Honor?

26 THE COURT: Yes.

27 Q (By MR. REID) Um, Ms. Paglia, if you can just take a
28 look at this document and tell me if that refreshes your

1 memory as to when you took the new position as to the sales
2 specialist?

3 A Um --

4 Q Just hold on. Go ahead and take a look at both pages.
5 I'm sorry to interrupt you.

6 A Okay.

7 Q Okay. Thank you.

8 So my question then is, do you have a recollection as
9 to when you accepted the new position as sales specialist,
10 the non-managerial position you testified about?

11 A When I accepted it?

12 Q Right.

13 A According to that, I signed it on October 27th.

14 Q Okay. Of 2008?

15 A Yes.

16 Q Now, before you were terminated in early November of
17 2008 wasn't there, um, a meeting at Creston Village
18 involving you and the regional team and the executive
19 director in late October?

20 A Yes.

21 Q And during that meeting, um, there was quite a bit of
22 controversy, wasn't there?

23 A There was a disagreement.

24 Q Um, do you have a recollection that, um, you took the
25 lead of the meeting instead of Tracy who was the regional
26 director of operations?

27 A Which meeting are you talking about?

28 Q I'm talking about a meeting at Creston Village on

1 October 29th, 2008, the one where there was some
2 disagreement that you testified about?

3 A I don't remember who took the lead.

4 Q Okay. Do you remember, um, in that meeting, um,
5 making statements to the executive director, Steve, um, to
6 the effect that, um, he was not meeting expectations in his
7 position as executive director?

8 A Do I recall that?

9 Q Yes.

10 A No.

11 Q Do you recall the executive director Steve walking out
12 of the meeting?

13 A Yes, I remember that.

14 Q Why did he walk out of the meeting, if you recall?

15 MS. CLEMENT: Lacks foundation.

16 THE COURT: Sustained.

17 Q (By MR. REID) Do you have a recollection of why Steve
18 walked out of this meeting where there was a disagreement?

19 MS. CLEMENT: Now it's compound and it still lacks
20 foundation.

21 THE COURT: Sustained.

22 Q (By MR. REID) The meeting that we are talking about
23 at Creston Village, you recall that Steve walked out?

24 A Yes.

25 Q Do you recall having a understanding of why he walked
26 out of the meeting?

27 A I don't know why he walked out of the meeting. He
28 threw a tantrum.

1 Q Do you recall getting feedback from anyone that your
2 team members, um, thought that you were antagonizing the
3 situation?

4 A We had a disagreement, it blew up, he walked out, and
5 then we made up afterwards. We discussed it.

6 Q Do you remember expressing to your team members after
7 the executive director walked out, um, telling them that you
8 didn't think that Steve, um, liked Emeritus or your team?

9 A Do I remember that?

10 Q Uh-huh.

11 A I don't remember.

12 Q Okay. Do -- were you counseled by, um, Ms. Matlin
13 (phonetic) as a result of this meeting?

14 A Is that Maura?

15 Q Yes.

16 A Um, I had a conversation on the phone with her about
17 it. It wasn't a counseling. I mean, I don't know what you
18 really mean when you use the term "counsel". Um, we talked
19 about it.

20 Q So at this point in time Maura Matlin was your
21 supervisor, correct?

22 A Well, what's -- what's the date? I don't know.

23 Q Okay. In your position as the -- in the new position
24 as the sales specialist, who was your supervisor?

25 A Maura.

26 Q And do you recall talking to Maura on the phone three
27 times that -- during that day when you had the meeting at
28 Creston Village that we have been talking about?

1 A I remember talking to her on the phone. I don't
2 recall exactly how many times it was.

3 Q Did -- do you have a recollection of Maura telling you
4 that she did not think your behavior was professional?

5 A She wasn't there. She didn't know what my behavior
6 was. This was on the phone. She was 3,000 miles away.

7 Q Okay. My question is, do you have a recollection of
8 her telling you that she had concerns that your behavior was
9 not professional?

10 MS. CLEMENT: Hearsay.

11 THE COURT: Is there an exception?

12 MR. REID: It goes to the witness's state of mind,
13 your Honor, as to why she was terminated and it's a
14 prior inconsistent -- it would be inconsistent with her
15 testimony, if she remembers.

16 THE COURT: That would be for the truth of the matter
17 asserted, right?

18 MR. REID: Well, it's -- it would be both; it would be
19 her state of mind and also the voracity of her testimony.

20 THE COURT: Okay. Voracity is not an exception to the
21 Hearsay Rule. So her state of mind as to what she
22 understood at the time?

23 MR. REID: Correct, correct.

24 THE COURT: All right. Ladies and gentlemen, I'm
25 going to allow her to answer this question for the limited
26 purpose of helping you understand what the witness's
27 personal state of mind was at the time these conversations
28 were going on. It is not for the truth of the matter;

1 meaning, that person's not here, we don't -- she is not on
2 the stand telling us what she said or didn't say, so we
3 don't know that. But we are finding out if -- if that
4 statement was made what impact it might have had on the
5 witness.

6 You can answer it.

7 THE WITNESS: Could you repeat the question?

8 MR. REID: I can.

9 Q (By MR. REID) Did -- do you have a recollection of
10 Ms. Maura Matlin telling you on the phone that day that your
11 behavior in the meeting was not professional?

12 A Well, since she wasn't there and doesn't really know
13 what happened and was just basing her impression of what
14 happened on what I told her, then how could she know if my
15 behavior was professional or unprofessional?

16 Q Okay.

17 A She wasn't there to witness it.

18 Q Okay.

19 A So, no. To answer your question, no, I do not
20 remember her saying that to me.

21 Q Um, do you remember her telling you that your
22 involvement in escalating the situation with the executive
23 director was not appropriate?

24 A She wouldn't have known if it was -- if I was the one
25 responsible for escalating it.

26 Q So you don't remember that?

27 A No.

28 Q Now, I want to follow-up a little bit on this, um,

1 situation that you testified about on Thursday and today
2 about the prospective resident who was put in the ambulance
3 and taken to the community. Do you recall that?

4 A Yes.

5 Q Okay. And do you remember which community that was?

6 A Yes. It was the, um, stand-alone dementia facility in
7 Fremont, California.

8 Q All right. And do you remember when that was?

9 A No.

10 Q In the eight months that you worked at, um, Emeritus,
11 can you give us any time frame as to when this -- this
12 incident occurred?

13 A I don't specifically remember. I wouldn't want to
14 misspeak.

15 Q I don't want to -- I don't want to force you to guess.
16 And I'm going to try one more time.

17 Was it earlier in your time frame with Emeritus or was
18 it later in the time frame? If you can do that. If you
19 can't, that is okay too.

20 A It was probably in the middle. I don't really
21 remember exactly.

22 Q All right. Now, I want to ask you this: What
23 happened to the person in the ambulance?

24 A They actually went, um -- I think they might have gone
25 back to the hospital. But I did hear afterwards that they,
26 um, went to, um, a facility owned by another company because
27 they were angry at being turned away.

28 Q Okay. So I want to know what you know and what you

1 think. Do you know whether -- where that ambulance went
2 once he was turned away from the Emeritus community?

3 A I couldn't say with 100 percent certainty.

4 Q Now, were you concerned about this person being turned
5 away?

6 A In what way? I'm not sure I know what you're asking.

7 Q Did it cause you any concern at all that this man was
8 put in the ambulance at a hospital and driven to a Emeritus
9 community and then turned away?

10 A Was I concerned about it?

11 Q Right.

12 A I'm not sure what you mean.

13 Q Okay. Um, in Emeritus, um, was there a concept called
14 "safely somewhere"?

15 A Um, yes, there was.

16 Q And what was that concept?

17 A Making sure, um, if people -- I think the -- I think
18 the concept behind that was making sure that seniors were
19 somewhere where they would be considered safe, whether it
20 was their home, an Emeritus facility, the hospital, at their
21 daughter's house, but just making sure that they were
22 somewhere safe.

23 Q Emeritus wanted to make sure that they were somewhere
24 safe?

25 A That --

26 MS. CLEMENT: Objection, that's argumentative.

27 THE COURT: Sustained.

28 MR. REID: I'm sorry?

1 THE COURT: Sustained.

2 Q (By MR. REID) Was it your understanding that this
3 concept of "safely somewhere" was that Emeritus wanted to
4 make sure that this elder person was somewhere that was safe
5 for them?

6 A Was it my understanding that's what the concept was?

7 Q Correct.

8 A Uh-huh. Yes.

9 Q Okay. Now, I want to focus on the -- the -- the call
10 regarding that, um, lack of 602 form, okay. Do you have
11 that call in mind that you testified about?

12 A Is that the one with Budgie Amparo?

13 Q That's what -- I believe that is what you testified
14 to. That specific call, do you have that call in mind?

15 A Could you be more specific about the call?

16 Q I'm going to ask you some questions about it, but I
17 want to make sure we are talking about the same thing, okay.
18 So I'm going to direct your attention to your testimony
19 about a telephone call after, um, this man was turned away
20 from the Fremont community.

21 A Okay.

22 Q Okay. And do you recall testifying about a telephone
23 call that involved Mr. Amparo and other people?

24 A Yes.

25 Q Okay. I want to ask some questions about that call,
26 okay?

27 A Go right ahead.

28 Q When did that call take place?

1 A I don't recall the exact date. It was after the
2 person was turned away.

3 Q Okay. And, um, did that call take place before or
4 after the meeting you told us about where there was the
5 discussion about 602 forms and your testimony that they
6 weren't necessary?

7 A Oh, the phone call was before the meeting.

8 Q Okay. So when was the meeting?

9 A The meeting was in October.

10 Q All right. And, um, you mentioned that one executive
11 director was particularly bothered?

12 A Yes.

13 Q Was that, um, Mr. Rich Lieberman (phonetic)?

14 A Yes.

15 Q And he was actually the one that raised the question
16 about whether it was okay to accept someone without a 602,
17 correct?

18 A If you say so. I don't remember exactly what opened
19 up the discussion but...

20 Q All right. Isn't it -- isn't -- wasn't the discussion
21 at that meeting, um, focused on whether it was appropriate
22 for an Emeritus community to accept a resident without a 602
23 form under an emergency situation?

24 A No, that was not discussed.

25 Q Wasn't it discussed at that meeting that in the
26 instance where someone came to an Emeritus community in an
27 emergency and didn't have the necessary paperwork that there
28 should be some discussion and consideration about whether

1 they should let that person move in?

2 MS. CLEMENT: Objection, your Honor, it's
3 argumentative.

4 THE COURT: Overruled.

5 THE WITNESS: I think that, um, the point is that you
6 cannot admit anybody without a 602, according to State
7 regulations. So it wouldn't matter if it's an emergency or
8 not, you cannot do it.

9 Q (By MR. REID) Okay. But what I'm asking you --

10 A Okay.

11 Q -- is in that meeting wasn't the context of the
12 discussion about whether you -- it would be appropriate or
13 acceptable to allow someone to move in without a 602 in the
14 context of an emergency situation?

15 A No, it was not in the context of an emergency
16 situation. It was in a general context. The emergency
17 situation came up after Angela Neale got called on the
18 carpet for saying that in the meeting.

19 Q Okay. So is it your recollection that Mr. Lieberman
20 was, um, concerned about some broad global practice of
21 allowing people to move in without the 602 forms?

22 A He was the one that expressed concern about his
23 license, yes.

24 Q All right. And that was in the context of an
25 emergency?

26 A No, it wasn't in the context of an emergency.

27 Q And in that meeting -- are you okay?

28 A My neck hurts.

1 Q Okay. Um, do you need to take a break or are you
2 okay?

3 A (Witness nods head.)

4 Q I asked you two questions. I want to make sure you're
5 okay. I -- I don't want to ask you questions if --

6 THE COURT: We are going to take a break in about
7 seven minutes.

8 MR. REID: Okay.

9 THE WITNESS: All right.

10 Q (By MR. REID) Um, in that meeting wasn't it also
11 expressed that if there was a limited circumstance where
12 someone was, um, wanting to move in without the 602 form
13 that there would have to be careful consideration given as
14 to whether it would be appropriate?

15 A I don't remember the discussion really going into that
16 much detail about it. It was said that, um --

17 Q Okay. Thank you.

18 A Okay.

19 Q Do you remember in that meeting that it was expressed
20 that the community would not be making the decision
21 independently as to -- to allow someone to move in without a
22 602 form?

23 A I don't understand that question.

24 Q Do you remember that in the meeting it was expressed
25 that if a community was considering allowing someone to move
26 in without a 602 they would need to contact a regional or
27 divisional person and give a detailed explanation about the
28 circumstances pertaining to the admission?

1 A Um, I -- I remember that -- I vaguely remember that
2 being discussed as what to do the next time that might
3 happen.

4 Q Do you recall that in that meeting in the discussion
5 about the appropriateness of allowing someone to move in
6 without a 602 the facility would need to provide the
7 regional or divisional people with, um, information about
8 the background of the individual, um, and what information
9 was available at the time?

10 A Um, I don't recall that. But the whole reason why the
11 State requires a 602 is to make sure that a person doesn't
12 have a communicable disease like tuberculosis or doesn't
13 have a stage 3 or 4 wound or MRSA or maybe a colostomy bag,
14 something that wouldn't be acceptable in a assisted living
15 environment. And the only way of being able to determine
16 that is to have the physician -- the signed physician form
17 stating that this person is in the appropriate health to be
18 able to be admitted.

19 MR. REID: Your Honor, I would ask to move to strike
20 the answer after "I don't recall" as non-responsive.

21 THE COURT: I think she has answered it. Let's move
22 on.

23 MR. REID: Okay. Your Honor, I would ask permission
24 to display Exhibit 129 which has been admitted into
25 evidence. Pages 1 through 3 have been admitted, your Honor.

26 THE COURT: Correct. You can show pages 1 through 3.

27 MR. REID: Thank you.

28 Okay. Could you bring up the -- the top portion of

1 the document?

2 Q (By MR. REID) All right. Do you recognize this form
3 as being a, um, complaint investigation by the Department of
4 Social Services?

5 A That's what it says.

6 Q Okay. And it's a follow-up of a complaint that was
7 filed on December 17th, 2008?

8 A Okay.

9 Q Do you have any understanding of who made that
10 complaint on December 17th, 2008?

11 A What was the complaint?

12 Q Okay. Good question. Let's take a look at the
13 complaint. Facility is accepting residents without LIC 602.
14 Corporate office directing facility to admit without LIC
15 602.

16 A Are you asking me if I made that complaint?

17 Q I just asked you if you have any understanding of who
18 made the complaint?

19 A I -- no, I don't.

20 Q Now, um, if you could go to the next part, please. I
21 want to ask you about the, um -- what the LPA found.

22 The person -- the LPA is the person from the State,
23 correct?

24 A Yes.

25 Q Okay. And, um, there were -- the LPA found that there
26 were some missing 602 forms, correct?

27 A That's what it says.

28 Q Okay. And then in meeting with the folks at the

1 community, um, the LPA was told and reported that the
2 corporate representative for Emeritus approved the practice
3 of admitting someone without a physician report, correct?

4 A Are you asking me if that is what it says?

5 Q Yeah. Do you have that in mind?

6 A It looks like it.

7 Q I'm sorry?

8 A It looks like that is what it says.

9 Q Do you remember that being communicated in the meeting
10 you were at?

11 A No.

12 Q That a corporate representative approved the practice
13 of admitting someone without a physician report; is that
14 what you said happened at that meeting?

15 A You're totally confusing me. I'm not really sure.

16 Q I'm not trying to confuse you. I apologize.

17 I want to know, the meeting we have been talking
18 about, your testimony is that a corporate representative
19 said it's okay to admit without a 602 --

20 MS. CLEMENT: Objection, misstates testimony, your
21 Honor.

22 MR. REID: -- right?

23 MS. CLEMENT: She said Angela Neale.

24 THE COURT: Ladies and gentlemen, you are the ultimate
25 arbitrator of what the witness said during the course of his
26 or her testimony.

27 Mr. Reid, she has no personal knowledge of this
28 document. Ask her a question and don't read the document

1 because she has no personal knowledge of the document.

2 MR. REID: Okay. Thank you, your Honor.

3 Q (By MR. REID) Um, Ms. Paglia, during the meeting
4 with --

5 A Which meeting?

6 Q The meeting following the phone call where Ms. Neale
7 said it was okay to admit residents without 602s.

8 A Okay, okay.

9 Q In that meeting wasn't it also told to the people at
10 the meeting that the practice of admitting without a 602
11 could -- could not be done indiscriminately or on a regular
12 basis?

13 A No, that is not what she said.

14 Q Didn't Ms. Neale say that admitting without a 602
15 should happen on a case-by-case basis?

16 A No, she didn't say that.

17 Q And did Ms. Neale say that the facilities -- in that
18 meeting say that the facilities could not make independent
19 decisions to admit someone without a 602?

20 A No, she didn't say that either. All she said was,
21 Don't worry about it, Emeritus will have your back.

22 Q Okay.

23 A Those were her exact words.

24 Q All right. I heard you say that.

25 Didn't Ms. Neale, um, also tell, um, the folks at that
26 meeting we have been talking about that corporate would need
27 to be contacted and given a detailed explanation about the
28 circumstances pertaining to the admission?

1 A Nope, she didn't say that either.

2 Q Okay. Next page, please.

3 And during the meeting, um, didn't Ms. Neale say that,
4 um, before a joint decision by corporate and the facility to
5 admit the resident without the 602, um, all of the
6 participants in the decision would have to give
7 consideration to the amount and quality of the background
8 information already acquired; didn't she say that?

9 A I told you what she said and she didn't say that.

10 Q Okay. Didn't she say that in making the decision the
11 needs of the prospective resident and any circumstances or
12 needs that would justify admitting the person without the
13 documents would also have to be considered?

14 A She did not say that.

15 MS. CLEMENT: Argumentative, your Honor.

16 THE COURT: Objection is overruled.

17 Would this be a good time to take our morning break?

18 MR. REID: Actually, I have like two more minutes,

19 THE COURT: Okay. Let's finish up.

20 MR. REID: Everybody wants a break, but I am almost
21 done.

22 Q (By MR. REID) Ma'am, I want to show you Exhibit 5035.

23 Can I get that for the witness, your Honor?

24 **(Joint Exhibit 5035 was marked for identification.)**

25 THE COURT: Yes. 5035?

26 MR. REID: Yes. It was added on as the very last
27 exhibit, your Honor.

28 Q (By MR. REID) Could you turn to the last page of that

1 exhibit, Ms. Paglia?

2 A Okay.

3 Q Do you recognize your signature on the last page of
4 this document?

5 A Yes, I do.

6 Q What is this document?

7 A Confidential settlement agreement and general release
8 of all claims.

9 Q Okay. And was this related to your settlement of
10 your -- your employment lawsuit --

11 A Yes.

12 Q -- with Emeritus?

13 A Yes.

14 MR. REID: Your Honor, I would offer Exhibit 5035 into
15 evidence.

16 MS. CLEMENT: Objection, your Honor. I object to it,
17 it's not relevant. And, furthermore, it's a confidential
18 agreement that this witness and Emeritus are bound to.

19 THE COURT: Well, I'm assuming by the request of
20 Emeritus that they are waiving any confidentiality
21 previously requested of this witness and are releasing her
22 from any liability with respect to any waiver of
23 confidentiality. We need to have a clear record on that.

24 MR. REID: Yes.

25 THE COURT: Is that correct?

26 MR. REID: Certainly in court here, um, she is under
27 subpoena and we wouldn't make any --

28 THE COURT: That is not my question to you. You are

1 on a public record now.

2 MR. REID: Right.

3 THE COURT: We have video --

4 MR. REID: Right.

5 THE COURT: -- going on in the courtroom.

6 Are you, on behalf of Emeritus, waiving any claim with
7 respect to confidentiality so that this witness may respond
8 and that I may approve it for admission, if you so want it?

9 MR. REID: Yes, your Honor.

10 THE COURT: All right. That's not the end of the
11 inquiry then.

12 MR. REID: All right.

13 THE COURT: Ms. Paglia --

14 THE WITNESS: Yes.

15 THE COURT: -- are you waiving any confidentiality
16 that you may have in this agreement at this time, or would
17 you like to think about that over the break?

18 THE WITNESS: What do you mean by that?

19 THE COURT: It says it's a confidential settlement
20 agreement.

21 THE WITNESS: Yes.

22 THE COURT: And you have signed off on it and they
23 have signed off on it, so the confidentiality runs both
24 ways.

25 THE WITNESS: Uh-huh.

26 THE COURT: Are you waiving any claim that Emeritus
27 has inappropriately broken the confidentiality agreement by
28 raising this document?

1 THE WITNESS: Um, well, I don't really know. All I
2 know is --

3 THE COURT: All right. We are going to take our break
4 now.

5 Ladies and gentlemen, leave your notebooks on the
6 chairs. Remember the admonitions. Let's be back at five
7 to.

8 And if the witness could wait for just a moment.

9 **(The following proceedings were held in open court, outside**
10 **the presence of the jury:)**

11 THE COURT: All right. Please be seated.

12 MR. REID: May we excuse the witness, your Honor?

13 THE COURT: I need the witness.

14 MR. REID: Okay.

15 Could I be heard at sidebar briefly?

16 THE COURT: Just a moment, please.

17 Ms. Paglia, this was apparently by signature a, um,
18 confidential agreement between you and Emeritus Corporation.
19 Emeritus apparently wants to have this, um, introduced as a
20 document into the record in this case and they are
21 apparently waiving any confidentiality of that since this is
22 an open proceeding in a open courtroom.

23 THE WITNESS: Are you saying that I'm not bound to
24 this in this courtroom?

25 THE COURT: I'm not saying one way or the other on
26 this. This is a situation where you signed a document. I'm
27 assuming you were represented by counsel at the time you
28 signed the document?

1 THE WITNESS: Yes, I was. Yeah.

2 THE COURT: All right. I would like to give you an
3 opportunity, if you think it's appropriate, for you to
4 contact your attorney and to discuss whether or not this
5 document should, in fact, be made an exhibit to this trial
6 or not. In other words, I'm not in a position now, um -- I
7 don't feel it's appropriate to ask you to waive it without
8 you having an opportunity to discuss it with your counsel.
9 Emeritus is apparently willing to waive that. I will give
10 you that opportunity, and I will hold off admitting this
11 document until after you have had an opportunity to talk to
12 that attorney.

13 Would you feel more comfortable doing that? Or do you
14 care one way or the other? It's totally up to you.
15 I'm going to give you a couple of minutes to think about
16 this. I wanted to talk to you before we took our break with
17 respect to that as well.

18 You may step down now and I will see you back at five
19 to 11:00.

20 THE WITNESS: Okay.

21 THE COURT: Counsel approach.

22 (Sidebar conference was held.)

23 (Recess.)

24 (Court Reporter switch.)

25 ---oOo---

26

27

28

1 **(The following proceedings were then in had in open**
2 **court, outside the presence of the jury.)**

3 THE COURT ATTENDANT: Come to order. Department 45
4 is once again in session. The Honorable Judge Judy Hersher
5 presiding.

6 You may be seated.

7 THE COURT: All right. Hi.

8 THE WITNESS: Hi.

9 THE COURT: What would you like to have happen?

10 THE WITNESS: Regarding waiving my --

11 THE COURT: In other words, they want to offer this
12 document into admission.

13 THE WITNESS: Okay.

14 THE COURT: Meaning, it becomes an exhibit as part
15 of this trial.

16 THE WITNESS: Okay.

17 THE COURT: Are you comforted able with that?

18 THE WITNESS: I wasn't able to get ahold of my
19 attorney, so I'm going to say, no, just because I'm not
20 really sure what I'm agreeing to.

21 THE COURT: So here's what I think we're going to
22 do, having talked to the counsel at sidebar. Mr. Reid is
23 going to ask you some additional questions. We're going to
24 hold off entering this document into evidence until you've
25 had an opportunity to talk to your attorney.

26 THE WITNESS: Okay.

27 THE COURT: Okay?

28 MS. CLEMENT: Your Honor, before, though, we get

1 back on the record --

2 THE COURT REPORTER: We are on the record.

3 MS. CLEMENT: Before we call in the jurors -- thank
4 you -- I just wanted to -- there was a representation made
5 at sidebar that there were no copies of these documents
6 available. And, yet, on the break, Mr. Reid had the
7 documents. They were copied. And as I noticed on the
8 time, they have the witness' initials and they're numbered.

9 THE COURT: All right. Well, we've talked about the
10 fact that all documents that are supposed to be used at
11 trial need to be marked as an exhibit. And if they're not,
12 they have to have a complete copy set ready for the other
13 side before any questioning or examination begins. And the
14 from this point forward, we will adhere to that, or whoever
15 offers it or attempts to refresh a witness, not having
16 complied with that, will not be permitted to do so.

17 So let's bring our jury in, please.

18 THE COURT ATTENDANT: Yes, ma'am.

19 **(The following proceedings were then had in open**
20 **court, in the presence of the jury.)**

21 THE COURT ATTENDANT: Come to order. Department 45
22 is in session.

23 You may be seated.

24 THE COURT: All right. Mr. Reid, please continue.

25 MR. REID: Yes. Thank you.

26 Q. (By MR. REID) Miss Paglia, do you have any
27 documents in your possession, e-mails, policies, notations
28 from your time working at Emeritus that reference "heads in

1 beds"?

2 A. No. I'm sorry. I don't.

3 Q. Do you have any documents in your possession from
4 your time at Emeritus that make reference to this notion
5 that the only proper move-out is if someone is deceased?

6 A. No, I don't.

7 Q. Do you have any documents in your possession that --
8 with regard to any policy, or practice, or directive to
9 broadly admit residents without 602 forms?

10 A. No.

11 Q. And I just -- now, I want to focus your mind, your
12 state of mind to what you knew and were thinking in October
13 of 2009. Okay? So this would be just about a year after
14 you left Emeritus. All right?

15 A. (No audible response.)

16 Q. Okay?

17 A. Okay.

18 Q. You have to say it out loud.

19 A. Thanks for reminding me.

20 Q. At that point in time, did you make any statement to
21 anyone, other than your attorney, that you had no
22 information that Emeritus violated any state, federal, or
23 other law or regulation regarding standards applicable to
24 the residential care facility for the elderly?

25 A. Did I make any statements?

26 Q. Yes.

27 A. Not that I recall.

28 MR. REID: That's all I have. Thank you.

1 THE WITNESS: Okay.

2 THE COURT: Miss Clement.

3 MS. CLEMENT: Yes, your Honor.

4 RECROSS-EXAMINATION

5 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
6 the Plaintiffs:

7 Q. This wasn't marked, but the defendant showed you
8 this letter and confirmation of your transfer in October of
9 2009.

10 Was there anything derogatory in that letter
11 offering you the position?

12 (Pause.)

13 THE WITNESS: No.

14 Q. (By MS. CLEMENT) Was there anything positive said
15 about you in that letter?

16 A. Yes.

17 Q. And what was said about you in that letter that was
18 positive?

19 A. Besides "Congratulations Lisa," it describes the
20 position, salary, etcetera, etcetera.

21 And then it says: Lisa, you are a strong asset to
22 the Emeritus team, and I believe that your experience as
23 our sales specialist will be challenging and rewarding. I
24 am confident that you will continue to succeed. Once
25 again, congratulations and best of luck in your new
26 position.

27 Q. This meeting that you had with the ED named Steve at
28 Creston Village, was it -- taking you back to that

1 conversation, the testimony that Mr. Reid -- the questions
2 Mr. Reid asked you, was it your experience at -- while
3 working at Emeritus that the executive directors and the
4 sales people in the individual facilities were under
5 intense pressure to fill the buildings while you were the
6 regional director?

7 A. Yes.

8 Q. And were you, too, under intense pressure to fill
9 the buildings?

10 A. Yes.

11 Q. Did Miss Neale ever tell you what she thought her
12 opinion was of Mr. Cincotta?

13 A. Yes.

14 Q. And what did she say her opinion was of
15 Mr. Cincotta?

16 MR. REID: It's hearsay, your Honor.

17 THE COURT: Any exception?

18 MS. CLEMENT: Yeah. It's an authorized statement,
19 and it goes to this witness' state of mind.

20 THE COURT: Goes to what?

21 MS. CLEMENT: Her state of mind. And it's also an
22 authorized statement by a corporate managing agent, Angela
23 Neale.

24 THE COURT: Well, it's not an authorized statement
25 for purposes of this issue, lawsuit. But it can go to her
26 state of mind the same way.

27 Ladies and gentlemen, again, this is another one of
28 those answers to questions where you are listening to the

1 answer -- or you're being permitted to listen to the answer
2 because it helps explain to you what was going on in this
3 witness' mind at the time she was engaging in a particular
4 act.

5 Go ahead.

6 Q. (By MS. CLEMENT) Can you tell the jurors what
7 Angela Neale told you was her opinion of Mr. Cincotta.

8 A. Well, she expressed her opinion about him several
9 times during our relationship. But some of the things that
10 come to mind is she said he was fluffy and had no backbone.
11 He didn't know what he was doing. And if it wasn't for the
12 Summerville people, Emeritus would have no systems in
13 place, because they brought all the systems in place when
14 the two companies merged.

15 Q. Mr. Reid asked you questions about complaints or
16 concerns that were raised with you in September of 2008.
17 And one of those was that you weren't focusing on your role
18 as the regional director of sales and marketing because
19 they wanted you to stay out of operations.

20 Do you remember that?

21 A. Well, I don't specifically remember that in
22 September, but I do remember that being said several times.

23 Q. And was it your responsibility to go into the
24 facilities and not just look at sales and marketing, but to
25 be the eyes and ears for the whole team? Every time you
26 went into the building, meet with the ED, meet with the
27 other management people in the building?

28 A. Yes.

1 Q. And you were supposed to be reporting back on a
2 weekly basis as to what you saw in the building?

3 A. Um --

4 Q. And what was being told to you?

5 A. I was supposed to be reporting back, not necessarily
6 on a weekly basis, but I was supposed to report to the
7 other regionals on my team.

8 Q. So you heard this "stay out of operations" a lot
9 during the course of your employment?

10 A. Yes.

11 Q. And did that mean stay out, to your understanding --
12 strike that.

13 Did you understand "stay out of operations" to mean
14 to quit complaining about understaffing and lack of
15 training in the buildings?

16 A. I'm sorry? Could you --

17 MR. REID: It's leading, and it assumes facts not
18 established. It's also compound.

19 THE COURT: Sustained.

20 MS. CLEMENT: We did call her under 776.

21 Are you sustaining on compound?

22 THE COURT: I am also sustaining it on -- I do not
23 see this witness as adverse. Let's go into direct
24 questions here, please. And it is compound.

25 MS. CLEMENT: Okay. Thank you, Judge.

26 Q. (By MS. CLEMENT) What did you understand "staying
27 out of operations" to mean?

28 A. Um, if the subject matter did not pertain directly

1 to a sales and/or marketing "function," to keep my mouth
2 shut.

3 Q. Is there any correlation with your ability to sell a
4 building with whether a building has adequate staff and the
5 staff are trained?

6 A. Yes.

7 Q. And can you explain to the jury what that
8 correlation is.

9 A. Um, many -- many times the adult children or the
10 perspective resident themselves makes their decision on
11 which building, which company they're going to choose based
12 on their impression of everything that they hear, see,
13 smell, taste, etcetera, when they visit the different
14 communities. And one of the things that companies promote
15 in trying to sell their buildings is to have staff approach
16 prospective residents or their families on tours and
17 introduce themselves and talk a little about what they do,
18 to be invited for a complimentary meal so they can try the
19 food, to make sure there's no foul odors in the building.

20 So it's directly related to staffing and the
21 happiness of the staff and whether or not people can see
22 themselves living in the building or see themselves placing
23 one of their parents in a particular building. So it's
24 very directly related.

25 Q. Thank you.

26 MS. CLEMENT: I have no further questions. Thank
27 you.

28 THE WITNESS: Okay.

1 MR. REID: Nothing further, your Honor.

2 THE COURT: Ladies and gentlemen, do you have any
3 questions for our witness?

4 Miss Paglia, we allow our jurors to ask questions.
5 So I'm going to gather them up, meet with counsel at
6 sidebar for a moment, and then I will ask you the
7 questions.

8 THE WITNESS: Okay.

9 THE COURT: Terrance, I think we've got some others
10 there.

11 Counsel, please approach.

12 (Whereupon an unreported bench conference was then
13 had in open court between the Court and counsel.)

14 THE COURT: Okay. Ready?

15 THE WITNESS: Mm-hmm.

16 THE COURT: Have you ever heard it referred to that
17 each sale would be referenced as "a unit"?

18 THE WITNESS: Have I heard that term?

19 THE COURT: And answer to the jury. Yes.

20 THE WITNESS: Yes, I've heard that before.

21 THE COURT: What did you understand that to be, "a
22 unit"?

23 THE WITNESS: Um, I don't know how to explain it.
24 Um, I guess the best way to explain it would be like a
25 touchdown.

26 THE COURT: Okay.

27 THE WITNESS: Or a measure of revenue would probably
28 be a better way to say it. A measure of revenue.

1 THE COURT: Did you find it unreasonable that since
2 Emeritus was a for-profit company that it would want to
3 fill its buildings?

4 THE WITNESS: Did I find it what?

5 THE COURT: Unreasonable.

6 THE WITNESS: Um, I've worked for other companies
7 that were nonprofit, and they also want to fill their
8 buildings. So, no. I have to say that it's not
9 unreasonable.

10 THE COURT: If you know, were sales ever conducted
11 at area hospitals?

12 I guess, sales solicited or confirmed at area
13 hospitals.

14 THE WITNESS: Sales people visited as part of their
15 job responsibility, yes. It was to visit area hospitals.

16 THE COURT: Did you know Mrs. Boice, the plaintiff
17 in this case?

18 THE WITNESS: No, I didn't.

19 THE COURT: Had you ever met her?

20 THE WITNESS: No, I never met her.

21 THE COURT: This juror wants to know how your
22 lawsuit against Emeritus turned out.

23 I'm not asking you to give any specifics about the
24 terms that might be in there, but they just want to know
25 how -- I guess, how did it end?

26 THE WITNESS: We settled. It did not go to jury
27 trial.

28 THE COURT: Do you believe that correct sales

1 projections are important for any for-profit company,
2 regardless of what the product is?

3 THE WITNESS: Well, I think projections are
4 important, but the difficulty is -- is in its accuracy.
5 Because you're predicting something that you don't have any
6 control over and that you don't -- you absolutely -- you
7 know, it hasn't happened yet. So it's very, very difficult
8 to be accurate with something that -- that is
9 unforeseeable.

10 THE COURT: Where are you working now?

11 THE WITNESS: I'm not working right now.

12 THE COURT: Are you aware of any emergency situation
13 where you believe Emeritus could accept a person without a
14 602?

15 THE WITNESS: No.

16 THE COURT: All right. Ladies and gentlemen, a
17 number of you have asked periodically for witnesses to tell
18 you what Title 22 says or doesn't say, or what the law is
19 or is not. The only person in the courtroom who will be
20 permitted to tell what the law is is myself. And that
21 will happen at the end of the case.

22 What's important for you to do now is to listen to
23 all of the testimony. And you will ultimately be applying
24 what you believe the facts are of this case to the law as I
25 give it to you at the end of the trial.

26 So, I apologize. I know that might be a little
27 frustrating for you. But there is quite a lot of law in
28 this area, and until I hear all of the testimony, I won't

1 even know specifically which law to give you to consider at
2 the end. Okay? So just bear with me and trust me on that.

3 Did you personally ever attempt to place a person
4 that you knew required too much care for Emeritus into an
5 Emeritus facility?

6 THE WITNESS: I'm not sure what the -- what they
7 mean by "too much care."

8 THE COURT: Meaning, care beyond what Emeritus was
9 able to provide.

10 THE WITNESS: Oh, did I personally? No. I never
11 have done that.

12 THE COURT: Did you ever file a complaint with the
13 Department of Social Services regarding Emeritus?

14 THE WITNESS: No.

15 THE COURT: Were you aware at the time of your
16 employment at Emeritus who staffed the Ethics First
17 Hotline?

18 THE WITNESS: No, I wasn't privy to that.

19 THE COURT: Did you believe it was an independent
20 company, separate from Emeritus?

21 THE WITNESS: Before I made the calls, I actually
22 went on the website, and it was very vague as to actually
23 who the Ethics First Hotline was manned by. It could have
24 been interpreted either to be part of Emeritus, or like a
25 subcontractor. I was not certain about exactly who it was
26 I was calling.

27 THE COURT: Have you ever spoken to John Cincotta
28 after you were terminated from Emeritus?

1 THE WITNESS: No, I haven't.

2 THE COURT: Since sales are so closely related, why
3 were you told, if you know, to stay out of the operations
4 side of the business?

5 THE WITNESS: Do I know why I was told? No. Still
6 haven't figured that one out. (Laughter.)

7 THE COURT: Were you aware of any Emeritus policies
8 about charging deceased residents' families for an
9 additional period of time?

10 THE WITNESS: Was I --

11 THE COURT: Were you aware of that?

12 THE WITNESS: Yes, I was aware of that.

13 THE COURT: There has been some questions related to
14 a meeting that allegedly took place in Tracy, California,
15 in October of 2008, today by counsel.

16 Do you recall that?

17 THE WITNESS: Yes.

18 THE COURT: During that meeting, was it recorded --
19 were the conversations recorded in any way?

20 THE WITNESS: No, they were not recorded.

21 THE COURT: Was there any type of videotape going
22 on?

23 THE WITNESS: No.

24 THE COURT: Why did you return to work at Emeritus
25 after the first go-around?

26 THE WITNESS: When I worked for Emeritus in 1996,
27 they were a very small company and they actually -- I had a
28 very positive experience with them. And I went into some

1 other industries probably for about the next ten years or
2 so. I sold real estate for seven years and then I did a
3 couple other things. And in 2008, as we all know, the
4 economy took quite a severe hit, and the niche real estate
5 market that I was involved in at the time just disappeared
6 off the face of the earth. So I was kind of -- I found
7 myself in a position of needing to kind of find another
8 industry to go into. And when I started thinking about
9 what I was qualified to do, I remembered working for
10 Emeritus. And I really, really enjoyed working in the
11 senior living industry. It was very fulfilling to me.

12 So I went on their website and looked for a job, not
13 being aware at the time that they had merged with another
14 company. Because they were -- they were an independent
15 company when I worked for them in '96. And then
16 unbeknownst to me, when I went back in 2008 to, you know,
17 look and see what was available there, it wasn't until I
18 started interviewing that I found out they had merged with
19 this company called Summerville.

20 Does that answer the question?

21 THE COURT: The total amount of time that you were
22 with Emeritus was how long, the second time, in Division
23 Two?

24 THE WITNESS: Well, officially, from April 7th, 2008
25 to -- I think it was the third week of November, 2008.

26 THE COURT: Okay. In that time period then, if you
27 are able to tell this juror, how many upper corporate staff
28 turnovers were there?

1 And there's no definition here of "upper corporate
2 staff."

3 THE WITNESS: There's a -- there was a lot of
4 turnover on the regional level. I was quite surprised when
5 the COO of the company just mysteriously left the company.

6 THE COURT: This was a question of how many.

7 THE WITNESS: Oh, how many.

8 THE COURT: Do you know how many?

9 THE WITNESS: Well, that would be one. I don't
10 know.

11 Is that just my region, or the company, or...

12 THE COURT: It isn't limited to just your region.

13 THE WITNESS: Oh. There was a lot of turnover at
14 the regional level. A little bit at the executive level, I
15 guess. One that I know of.

16 THE COURT: All right. This juror heard that you
17 were moved into a sales position just before you were let
18 go or fired.

19 Why do you believe you were transferred from your
20 position into the sales position and then fired?

21 THE WITNESS: I think that's the 64 thousand dollar
22 question. I have absolutely no idea. The -- I think -- I
23 feel very confident that this company, the powers that be
24 recognized my strengths. It says here they felt I was an
25 asset to the company. I'm pretty convinced that the VP
26 team either knew or figured out that I was involved in the
27 phone calls that many of us made to the Ethics First
28 Hotline to try to affect change in the company.

1 So I think maybe through discussions, maybe they
2 came to the decision that they didn't actually want to lose
3 me as an employee. They wanted to take advantage of, you
4 know, a strong skill set that they felt I had, but it
5 probably wasn't in anybody's best interest, mine or the VP
6 team, to continue having me work under them, alongside
7 them.

8 So that's just my opinion. I don't really know
9 because nobody's ever told me. I, to this day, do not
10 why -- you know, officially why I was terminated. I wasn't
11 given an answer, a reason.

12 THE COURT: Miss Clement, do you wish to follow up?

13 MS. CLEMENT: No, your Honor.

14 THE COURT: Mr. Reid, do you wish to follow up?

15 MR. REID: No further questions, your Honor.

16 THE COURT: Ladies and gentlemen, do you have any
17 additional questions?

18 All right. Counsel, approach please for a moment.

19 (Whereupon an unreported bench conference was then
20 had in open court between the Court and counsel.)

21 THE COURT: All right. You are going to remain
22 subject to recall. And what that means is, if you hear
23 from either the Court or any of the counsel that you need
24 to return for further testimony, you will need to return.

25 And on the question that I posed to you, I need to
26 hear from you through my court staff by Friday, if you've
27 gotten an answer, one way or the other.

28 THE WITNESS: Okay.

1 THE COURT: Terrance, if you would please hand her
2 Alicia's card on her way out.

3 And thank you very much for being here.

4 THE WITNESS: Okay. Thanks.

5 THE COURT: All right. Who is our next witness,
6 please?

7 MS. CLEMENT: Your Honor, at this time the
8 plaintiffs will be playing Alicia Parga's videotaped
9 testimony.

10 It's about ten minutes long, your Honor.

11 So we're calling Alicia Parga under 776. She's out
12 of subpoena range, your Honor.

13 THE COURT: All right.

14 She's not there. She's on videotape.

15 THE COURT ATTENDANT: Oh. All right.

16 THE COURT: You could call her, but I don't think it
17 would be...

18 (Laughter.)

19 MS. CLEMENT: She might not answer the phone.

20 Thank you, Terrance.

21 THE COURT ATTENDANT: You're welcome.

22 **(The following videotaped deposition was then played**
23 **in open court):**

24 TESTIMONY OF

25 ALICIA PARGA, a witness called pursuant to 776 of the
26 Evidence Code by the Plaintiffs:

27 ///

28 ///